

This is a working document of Group A
Created October 11, 2006
Updated October 14, 2006
Updated Friday, October 20, 2006

How to use this document for the Rapporteur Group final session on October 24, 2006

- *The recommendations are ‘straw proposals’.*
- *Recommendations may be mutually exclusive.*
- *Submit edits to the group, which could include replacement text.*
- *During the call, support for each recommendation will be noted.*
- *In order to enable participation, emails with written votes showing support, no support, or comments will be recorded, as well as recorded for in person participation.*

The Rapporteur comments about relevant expert materials are shown below the draft recommendations.

Policies for Contractual Conditions:
Existing Top Level Domains
Rapporteur Group A: Working Materials

| | |
|---|-----------|
| A. BACKGROUND..... | 2 |
| B. TERM OF REFERENCE 1 – REGISTRY AGREEMENT RENEWAL | 4 |
| C. TERM OF REFERENCE 2 – RELATIONSHIP BETWEEN REGISTRY AGREEMENTS AND CONSENSUS POLICIES | 8 |
| D. TERM OF REFERENCE 5 -- USES OF REGISTRY DATA | 10 |

The Rapporteur Group A used several documents as the basis for consideration, including staff's initial document entitled Policies for Contractual Conditions: Existing Top Level Domains Rapporteur Group A: Working Materials; the table from Annex 3 to PDP Feb06 Issues Report; the draft comparison of ICANN-registry agreements 20061009, the General Counsel's letter to Bruce Tonkin, Chair, GNSO Council 27 September 2006. Annex A: GNSO Policy Development Process is an additional resource to the Rapporteur Group A, and was provided by the Rapporteur. The Rapporteur group also used the list of questions submitted to the TF and all expert materials provided by the staff.

Background

1. Group A is analyzing Terms of Reference 1, 2 and 5. Group B is analyzing Terms of Reference 3, 4 and 6.
2. There is some overlap of policy implications between the two Rapporteur Groups. Each Rapporteur has served ex officio as member of the other Rapporteur Group.
3. The chair of the TF has served ex officio of the two Rapporteur groups.
4. Transcripts have been provided for Rapporteur Group A.
5. Expert Materials are found at GNSO *working documents* section at <http://gns0.icann.org/drafts/pdp-feb-06-expert-materials.pdf>. Other relevant documents provided by staff are part of the overall TF materials and are not listed in this report by the Rapporteur Group.
6. The Rapporteur reviewed the expert materials, and members of the Rapporteur Group undertook their own individual review.
7. Tuesday, October 24, 2006, should be the final conference call meeting of the Rapporteur Group A. A discussion of this report and a straw poll, as taken by the Secretariat, will form the basis for the report to the full Task Force.
8. The recommendations are drafted by the Rapporteur.
9. Members of the Rapporteur Group have been invited several times to submit written recommendations. Written changes/edits can be presented by any member of the Rapporteur Group or ex officio member as a replacement for discussion

during Tuesday's call.

10. Any written recommendations received regarding this final working document will be included in the final report to the full Task Force.
11. The Rapporteur Group will attempt to eliminate and 'fine tune' some of the options presented during their final working call, 10/24/06.

B. Term 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.

Each recommendation will be discussed briefly, and then a straw poll taken and recorded.

1.a.1: Yes. Ute, Danny, Marilyn, Jon Nevett by post, David Maher abstain

1.a.2: No.

1a.1. IF yes, then:

The policy should include, but not necessarily be limited to:

Time frame

What the ‘assumptions’ are regarding ‘rights’ of registry:

Other: TBD based comments from members of Rapporteur Group, TF, or public comments.

Time Frame:

1.a.1.1: the Policy regarding the time frame for registry contracts should be

1.a.1.1.1: Registry Agreements should be limited to a standard time frame of 5 years; there should be a rebid of all registry agreements.

OR

1.a.1.1.1alt: There should be a different standard term for non sponsored gTLDs and for sponsored gTLDs. Sponsored gTLDs should have a term of 7 years for rebids and non sponsored gTLDs should have a term of 5 years.

OR

1.a.1.1.2alt There should be a standard term for all gTLD registries. Of a commercially reasonable length,(definition of commercially reasonable realign with reaward term in PDP

Dec 05)[BC supports, David , Ute and Danny support commercially reasonable but not bound to other PDPDec 05,

Proposed There should be a standard term for all gTLD registries. Of a commercially reasonable length X to be proposed by Rapporteur members, or by TF]

1.a.1.2.1: Renewal Expentency:

1.a.1.2.1a: There should be an “expectation of renewal” by the incumbent/present registry holder in the competitive bid process.

Danny, “expectation of renewal” a contractor performs well, no need to tss things up for bidding, good performance is rewarded by renewal

Definition: An “expectation of renewal” is not an automatic right of renewal, but includes a competitive bid. However, a registry that has fulfilled the terms of the registry contract with excellence should have a reasonable expectation of renewal. For example, an existing registry that has done an excellent could be given XX point award that is applied to the overall rating of the registry contract. Such actions are customary in government procurement bids.

Government procurement at the national and ‘state’ level in most countries regularly hold competitive bid processes for services and systems that serve government agencies, including highly secure networks that serve the US Government.

OR

1.a.1.2.2 alt: there should be an automatic presumption of renewal for all registry agreements
Definition of presumption of renewal: this would involve a negotiation with the ICANN staff; incorporation of consensus and other policies, and publishing for public comment, but not involve a competitive bid.

OR

1.a.1.2.3alt: there should be an automatic presumption of renewal only for sponsored registry agreements. Non sponsored registry agreements should be rebid as determined above.

OR

1.a.1.3: There should be a presumptive renewal of the agreement every X years, but the negotiations must include incorporation of consensus policies and other policies applicable to similarly placed registries; all agreements must be subject to consensus policies.

OR

1.a.1.3.1: Any registry can apply for an exception from consensus policies, based on show of circumstances about why consensus policies should not be applied. Such documentation must be posted for public comment, and consideration given to the objections raised by the community in the development of the final agreement. Exceptions to consensus policies must not be grandfathered to other registries automatically.

OR

1.a.3: There should not be a presumptive right of renewal. All registry agreements should be subject to competitive rebid at a regular interval, based on above policy related to terms.

Rapporteur Summary to be developed, based on discussion.

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.

1.b. 1. The conditions for registry agreement 'rights of renewal' should be standardized for those registry agreements that are in the 'same category', e.g.

1.b.1.2. The conditions for registry agreement 'rights of renewal' should be consistent for non sponsored gTLDs and consistent for sponsored gTLDs. [e.g. differentiation by category].

OR

1.b.2. The condition for registry agreement 'rights of renewal' should be standardized for all registry agreements.

OR

1.b.3: The conditions for registry agreement 'rights of renewal' can be negotiated on an individual basis.

Discussion: Based on the analysis that the Rapporteur did, based on the documents provided by Dan Halloran, the following summary attempts to capture the present situation*.

Presumptive Renewal exists for the following categories of gTLDs:

Sponsored gTLDs : Yes

Non sponsored gTLDs: It depends:

.com had a form of presumptive renewal that was created by contract negotiations in 2001. [the two other versions of the .com agreement also have presumptive renewal].

.net negotiated presumptive renewal in 2005.

Other non sponsored gTLDs do not have presumptive renewal – e.g.
biz;.info;.name;.org; and .pro

Additional useful information for the Rapporteur

Group:

-.info and .biz contract lapses in the fall of 2007; .org does not lapse until 2009.

*Source: see Table from Annex 3 to PDP Feb 06 Issues Report

C. Term of Reference 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.

2.a.1: Consensus policy limitations are appropriate.

OR

2.a.2: All consensus policies should always apply to all gTLD registries.

OR

2.a.3. Consensus policies should always be applied to all gTLD registries; however, on an individual basis, during the contract negotiation, a registry could present a situational analysis and justification, which should be posted for public comment before acceptance/inclusion in the contract, for an exception/or modification from a particular consensus policy, due to unique circumstances of how a particular policy would affect that registry. [example: although .name is not a sponsored gTLD, the exception related to WHOIS is an illustrative example.] Such an exception will not create any prejudice for extension to any other gTLD registry.

OR

2.a.4 Consensus policies should not exist and the advice of the GNSO should be limited to advisory status.

OR

2.a.5: the present limitations to Consensus policies are appropriate and should continue.

Elaboration on 2.a.1: Consensus policy limitations are appropriate.

2.a.1.1: the present picket fence approach is suitable and should be maintained

OR

2.a.1.2: the present picket fence should be modified:

2.a.1.2.1: the present picket fence should be narrowed

2.a.2.2.2: the present picket fence should be broadened

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.

The term ‘sponsored gTLD operator’ is assumed to mean the holder of the string contract with ICANN and is not the ‘back end operator’. The Rapporteur Group did not discuss the issues of whether existing sponsored names are fully representative of the community it serves. The topic of what is ‘a sponsoring community’ is presently a topic of discussion within PDP-05 related to new gtld strings.]

2.b.1. Yes, certain policy making responsibility should be delegated to sponsored gTLD operators: such as:

- Charter and scope of ‘sponsored community’;
- eligibility to be in the ‘sponsorship’ category;
- eligibility to be in the group;
- eligibility for a particular name;
- the concept of a conflicts/dispute process as a service to the sponsored community – consistent with ICANN’s policies on dispute resolution.

OR

2.b.2: Yes certain policy making responsibility should be delegated to the sponsored gTLD operators, and should be uniform across all sponsored gTLDs.

OR

2.b.3: Yes, certain policy making responsibility should be delegated to the sponsored gTLD operator, but variations can be made based on the characteristics of the sponsored community based on a request from the sponsoring registry for an exception. All exceptions must be presented in written documented form, and posted for public comments. Exceptions can not be extended by staff to other registries and will not affect the impact or applicability of consensus policy on other registries.

OR

2.b.4: No, policy making responsibility should not be delegated to sponsored gTLD operators.

Discussion of present situation: Today, certain policies are delegated to the sponsored registries. Staff should be asked to provide a summary of these to the Task Force; for the purposes of the Rapporteur Group, the delegation regarding sponsored gTLDs, generally includes those items noted in 2.b.1. [based on rapporteur's review of .jobs and .travel].

D. Term of Reference 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.

Rapporteur's note: .com 25 May 2001 .com Registry Agreement I.. Definitions, 7. "Registry Data" means all registry Database data maintained in electronic form in the Registry Database and shall include Zone File Data, all data used to provide Registry Services submitted to registrars in elections form and all other data used to provide Registry Services concerning particular domain name registration or name servers maintained in electronic form in the Registry Database.

During the Rapporteur Group, it was proposed that this be the 'definition' for registry data and that registry data include traffic data. Traffic data is referenced in the new agreements as described in for example, the .info;.org;.biz proposed agreements under in .info agreement

(f.). To paraphrase, this makes it clear that the Registry operator can make commercial use of and collect traffic data regarding names and non-existent names for a variety of purposes, including the sale of domain name, but also for various identification of concerns about security. This section makes it clear that the process of introducing Registry Services shall not apply to traffic data. It also provides that if traffic data is made available it must be on non-discriminatory terms. [exact language can be found in the various agreements].

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.

Rapporteur NOTE: The obligation to deposit all registry data into escrow is assumed to continue and to apply to all registries. This should be clarified with the ICANN General Counsel's office.

5.a.1: The purpose for which data is collected by the registry must be defined [published] in registry agreements and in agreements between registry-registrars.

5.a.2: if such data is related to WHOIS, and includes personally identifiable information, the registry – if a thick registry – will be bound by applicable ICANN WHOIS policies. To the extent that a thin registry has personally identifiable information, it will be bound by applicable ICANN WHOIS policies. In any event, any data available to the registry related to information of a personally identifiable nature, beyond WHOIS data, will be kept private and secure. Sharing of such data will be subject to agreement and the responsibilities for protection of the data or the use of the data shall be maintained by any third party to whom the data is transferred.

5.a.1.a: any data collected by the registry that has applicability to the security and stability of the Internet, should be made available to ICANN and to responsible parties who may need to deal with trends that affect the stability or security of the DNS, such as but not limited to the SSAC.

5.a.2: There should be a policy on the use of registry data by the registry and to govern the

provision of registry data to any third party for any purpose.

5.a.2.1: the registry should disclose in the initial bid, and should not modify without public comment, the kinds of data collected, and the purpose for which it is used.

5.a.2.2: REcognizing that the registry is in a unique situation to gather certain kinds of data, due to its sole source role of operating the registry, when it is appropriate to provide data to third parties, the registry should provide data to third parties on a non discriminatory basis, and at a cost plus basis.

5.a.2.3: Uses of registry data should not become a marketable product or service as a registry service

5.a.2.4. Registry Operators should not be allowed to promote the sale of domain names. Abuse of this policy should be considered a material breach.

Discussion: Other covenants in ICANN policy specifically prohibit the registries from acting as registrars. It should not be permissible for the registries to take advantage of their unique status to gather data and exploit it to promote the sale of domain names in any way, either directly, or indirectly.

5.a.3. certain data that is available to the registry as a consequence of operating registry services, but which is not related to the provision of the registry, e.g. traffic data related to 'null' resolutions, should not be gathered, or used by the registry. If the registry can present a case where gathering 'null' resolutions is in the interest of security or stability of the Internet, such data must be provided to third parties on a non discriminatory bases. In no case can personally identifiable information be gathered.

OR

5.a.3.1. certain data that is available to the registry as a consequence of operating registry services, but which is not related to the provision of the registry services, e.g. traffic data related to 'null' resolutions, if gathered, cannot be used by the registry and cannot be provided to third parties.

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

5.b.1. Consensus policy is needed to ensure non discriminatory access to registry data that is made available to third parties

5.b.1.2.: Registry data that could result in the development of a competitive service at the registrar, or third party level, must be provided to the third parties, on non discriminatory terms and conditions, on a cost recovery basis.

5.b.1.3. the identification of such data includes traffic data that may be available to the registry based on 'null' resolutions