Donuts Inc.
2 October 2017
Complaint C 2017 00019

As ICANN's Complaints Officer, I have written up this complaint based on conversations I had on 2 October 2017 with Donuts Inc., an ICANN registry operator. I have used the standard complaints format to capture the information that was reported to me. Prior to publishing this document, I did share it with Donuts Inc. requesting feedback to make sure I properly captured their issues.

1. Complainant information:
Name: Crystal Ondo
Organization: Donuts Inc.

2. Short description of complaint:
ICANN recently released the Naming Services Portal (NSP), the Customer Relationship Management system that is replacing the old Global Domains Division Portal (GDD Portal). ICANN updated the old GDD Portal Terms of Use (ToU) to be applicable to the NSP. All registry operators – including Donuts – were presented with click through ToU, required to be accepted in order for them to access to the NSP. Donuts was surprised and unhappy with the updates made to the old GDD Portal ToU, which have now become the NSP ToU, for the below reasons:
   a) Process: Registry operators were not made aware or given a 'heads up' regarding changes to the ToU until the point when they were required to accept them in order to gain access.
   b) Substance: Donuts noted there were misstatements and other issues with the text in the ToU and is requesting modifications.

3. Date(s) your complaint occurred:
29 September 2017

4. Detailed description of your complaint:
In October 2017, the ICANN organization (all subsequent uses of "ICANN" refer to the ICANN organization) deployed the NSP; a replacement for the GDD Portal. The GDD Portal was shut down on 21 September 2017 while ICANN deployed the NSP. On 29 September 2017 Donuts received its login credentials to the NSP. When they attempted to log in to the NSP, they were presented with NSP ToU which (i) differ from the ToU found on the GDD Portal and (ii) required acceptance prior to access being granted.

When Donuts received its login credentials and the NSP ToU, they had been without access to a portal for conducting its ICANN business for 238 generic top level domains for eight days. The CRM system is the tool that is used to transact business operations, where required, between ICANN and registry operators. It is also used for logging and tracking requests and communications for historical purposes.

Donuts' primary complaint is with certain specific language in the new ToU. Its secondary issue regarding the ToU is with the process ICANN followed to communicate the NSP ToU with its

contracted parties. Donuts' complaint is that ICANN and registry operators have a bilateral, contractual relationship. The relationship between ICANN and its contracted parties is important to not only the 'contracting parties' but also to supporting the Domain Name System in a secure, stable and predictable way. Therefore, communication, collaboration and expectation setting between these entities is important to success, and benefits from open dialogue.

Donuts has concerns regarding certain text in the ToU that it believes to be problematic or to override other ICANN agreements. Donuts made an additional point that if ICANN had socialized the ToU with registries in advance of launching the NSP – some, if not all, of the language that is creating concern could have been addressed prior to issuance of the ToU with the launch of the NSP.

5. Please describe any steps you took to try and resolve the matter:
Donuts and registry operators have previously raised their desire to proactively communicate with ICANN regarding work that is substantive and impactful. ICANN has worked to improve on its communications in order to provide contracted parties with up front notifications of changes it is making that could affect them. In this instance, ICANN missed an opportunity to engage in advance and while that is not always the case—it is still an area of opportunity for ICANN to improve upon.

6. Please describe how your complaint can be addressed:
Regarding the process issue, Donuts would like ICANN to communicate with registries and registrars prior to rolling out new or changed processes, requirements, contracts, etc. that may impact their businesses.

Regarding the requested modifications to the language in the ToU, Donuts is asking ICANN to correct the language so they feel comfortable accepting the ToU and regain access to this much needed tool.

7. Please describe whether anyone else would be affected by circumstances leading to this complaint and how. Please also describe if anyone else could be affected by your proposed solution and how:
Everyone benefits from improved communications between ICANN and its contracted parties. Improved communication gives contracted parties predictability that enables them to optimally run their businesses.

Additionally, updating the ToU benefits all users of the NSP and ICANN as the updates should more clearly reflect the intent and appropriate contractual obligations.

8. Additional documents:
None.