

Supplementary Public Comment Response - Business Constituency's Concerns Regarding XYZ.com LLC Registry Agreement Amendments for [Launch of Supplementary Registration Proxy Service for gTLDs Operated by XYZ.COM LLC](#)

At Public Forum 2 of the ICANN55 meeting in Marrakech, Steve DelBianco, speaking for the ICANN Business Constituency (BC), raised concerns regarding “whether this RSEP would extend the legal reach beyond a given territory” and “ICANN staff [approving] the RSEP recently without really considering the BC's questions.” By way of background, it should be noted there are two distinct, but interrelated processes related to the registry's request to implement a Supplementary Registration Proxy Service (SRP) for its gTLDs – the Registry Service Evaluation Policy process and the Registry Agreement amendment process.

First, the Registry Service Evaluation Policy (RSEP) process evaluates whether the proposed service could raise significant Security or Stability or competition issues (as those terms are defined in the RSEP Policy <https://www.icann.org/resources/pages/registries/rsep/policy-en>), which Mr. DelBianco acknowledged in his comment at Public Forum 2:

“...I understand that the RSEP only looks at technical and competition issues, not specifically the point that we brought up [“...applying Chinese law outside of that country or in exempt jurisdictions within it could cause confusion for businesses using the top level domains that are the subject to this request”].”

As such, the RSEP itself would not evaluate application of extraterritorial law, the definition of Chinese registrant, registrars, nor the nationality of registrants, rather the RSEP evaluation was of those items described above as they are defined by Consensus Policy. With respect to the .XYZ proposal, on 9 December 2015, ICANN made its preliminary determination that the RSEP did not raise significant Stability or Security or competition concerns.

Second, following the determination with respect to Security and Stability, ICANN published for public comment the amendment to the XYZ.COM LLC Registry Agreement showing the proposed text required to implement the new Registry Service. The language of the amendments establishes the technical and contractual requirements to implement the SRP. As drafted, the language in the amendment is not specific to any particular jurisdiction, nor to registrations originating from registrants or registrars in any particular jurisdiction. The amendment requires that a Registry Service offered through a supplementary registration proxy must provide the same registration data, offer the same functionality, and be subject to the same specifications, service-level requirements, and emergency transition thresholds (as specified in Specification 10 of the Registry Agreement) as the corresponding primary Registry Services offered by the Registry Operator.

ICANN's public comment report acknowledged the BC's comments pertaining to language in the RSEP regarding "Chinese registrants" and "Chinese registrars" ("The BC believes the RSEP must clarify whether the term "Chinese registrants" on Page 1 and Page 7 means any "registrations coming from Chinese registrars" as noted on Page 8. Does this mean, for example, that any person, whether of Chinese nationality or not, that registers a domain covered by this RSEP would have their Registry data stored in secondary escrow in China?"). ICANN addressed these comments with an explanation that the amendments allow the Registry Operator to offer an SRP service to registrations originating from registrants or registrars in any jurisdiction, as long as the SRP service complies with all the terms of the Registry Agreement.

Should the BC have questions pertaining to how the Registry Operator defines "Chinese registrants" and "Chinese registrars", ICANN suggests directing these questions to the Registry Operator directly to gain clarity on its operating process. These questions pertain to XYZ.COM LLC's registration policies. These issues would not be evaluated through the RSEP's review of Security and Stability or competition. However, the Registry Operator would need to ensure its registration policies are in compliance with all other terms of the Registry Agreement.

With respect to the BC's concerns pertaining to the secondary escrow of Registry data, the Registry Operator must comply with Specification 2, "Data Escrow Requirements", of its Registry Agreement. XYZ.COM LLC is otherwise free to have additional backups of data, in any location, as long as it complies with all terms of its Registry Agreement, including Specification 2. It should be noted that registrars must comply with Sections 3.7.7.4 and 3.7.7.5 of the Registrar Accreditation Agreement (<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa>), which requires registrars provide notice to each registrant and obtain consent for the intended purposes and recipients of any personal data collected. Additionally, Section 2.18 of the XYZ.com LLC Registry Agreements obligates the Registry Operator to notify each registrar about the intended purposes and recipients, and prohibits the Registry Operator from using any personal data in any way that is incompatible. Registries and registrars are obligated to follow all applicable laws regarding data protection and privacy.

ICANN further notes, in the Additional information section of the RSEP request (<https://www.icann.org/en/system/files/files/rsep-2014159-xyz-et-al-request-02dec15-en.pdf>), XYZ.COM LLC states escrow deposits received "will only contain contact objects that have a value of "CN" in the element". The value "CN" is the country code for China. By only including objects that have a value of "CN" in the element, XYZ.COM LLC is limiting its secondary escrow deposits to registrants who provide CN, or China, as their country.

Finally, the BC raised additional concerns regarding how the proxy will work related to certain commands; how the caching and synchronization of the two databases will work; SLA commitments, certain EPP commands; and the equal treatment of local registrars and registrants. Section 5.1 of the Registry Agreement amendment

requires the SRP service to provide the same registration data, functionality, and service level requirements, and emergency transition thresholds specified in the Registry Agreement.