

## **ISPCP Constituency Position**

### **PDP on Policies for Contractual Conditions: Existing Registries**

#### **Introductory Statement**

The ISPCP Constituency believes that the conditions of gTLD registry contracts must be subject to certain policies. These policies should be developed by the GNSO through the usual PDP process.

#### **I. General Information about the Submitter**

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#### **II. Background Information about the development of the Comments**

The ISPCP Constituency has, on behalf of its members, made numerous comments in various public forums since the issue of contractual conditions arose. This position paper is a summary of those comments.

As those who have been largely responsible for building the infrastructure of the Internet, ISPs are in a unique position to help guide policy development at ICANN. We believe that it is vitally important that the GNSO and its Council balance the need to move quickly on important policy matters while carefully thinking through operational and legal impacts of any recommendations. Our constituency actively supports the principle of maintaining the stability that the Internet has always enjoyed. It is important that ISPs and connectivity providers continue to have a strong voice in any recommendations or changes ICANN plans to make.

ISPs are particularly concerned about the contractual conditions for registries. The vast majority of users impacted by these contracts are connected to the Internet through the community of Internet Service Providers. Repeatedly, our constituency has stood for reliability, fairness and predictability for all of our customers, the users of the Internet, large and small.

#### **III. Response to Terms 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.

The ISPCP Constituency opposes presumptive renewal of contracts as blatantly anti-competitive. A registry should provide so high a quality of service during the course of its contract that it will be in a strong position to win an open competition for contract renewal. Presumptive renewal provides a disincentive to strive for excellence. Furthermore, we consider the argument that without presumptive renewal registries will not be motivated to make long term investments in infrastructure development as utterly spurious. They will

in fact be highly motivated to make such an investment if they wish to win renewal in open competition when their contracts expire.

Sponsored TLDs may be an exception. In some cases registries with an limited community have made a substantial investment in policy development and implementation. It may be appropriate to hold these registries to a different standard vis à vis renewal.

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.

The ISPCP Constituency holds that rights of renewal should be standardized across all future agreements.

## **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.

The ISPCP Constituency maintains that every registry contract should in all cases require that registry to conform to consensus policies developed by ICANN. These policies are developed by the community of all stakeholders, of which the registries are full members; indeed, in the policy development process of the GNSO, the registry constituency has been given a double vote.

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 ISPCP recognizes that sponsored TLDs may need to establish policies regarding membership in their respective communities. These policies should be developed according to a well-defined, transparent process in cooperation with the GNSO.

## **3. Policy for price controls for registry services**

3a. Examine whether or not there should be a policy regarding price controls, and if so, what the elements of that policy should be. (note examples of price controls include price caps, and the same pricing for all registrars)

The ISPCP Constituency advocates price controls, narrow contractual limits beyond which a registry cannot raise its prices without appeal to and review by the ICANN board. The consideration process for price raises should be open and transparent. The entire ICANN community should be notified and detailed economic justifications should be well documented and open to public examination. A registry holds a public trust and is thus liable to public scrutiny, especially in the matter of a change of contractual terms.

3b. Examine objective measures (cost calculation method, cost elements, reasonable profit margin) for approving an application for a price increase when a price cap exists.

The ISPCP Constituency believes that it is possible to develop objective measures for the justification of raising registry fees. However, given that there is a wide diversity of registries' situations, these should not be too rigid. The operative principle here is that the burden of the proof is on the registry and the Board, in representing the best interests of the Internet community, are the final arbiters.

#### **4. ICANN fees**

4a. Examine whether or not there should be a policy guiding registry fees to ICANN, and if so, what the elements of that policy should be.

The ISPCP Constituency favors the development of policy regarding registry fees paid to ICANN. Fees must be uniform across registry contracts. ICANN must make a convincing case for any change to fees, based on its operating and strategic plans. The process of raising fees must be open and transparent.

4b. Determine how ICANN's public budgeting process should relate to the negotiation of ICANN fees.

See 4a.

#### **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.

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.

The ISPCP Constituency strongly recommends the establishment of policy regarding the use of registry data for purposes other than the execution of registry operations as required by contract. This includes account information and usage data (e.g. the frequency with which a name is looked up in the DNS). All proposed use of registry data for extra-operational purposes must be subject to ICANN approval according to a process similar to that for approval of new registry services.

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

The ISPCP Constituency believes non-discriminatory access to registry data that is made available to third parties is essential.

#### **6. Investments in development and infrastructure**

6a. Examine whether or not there should be a policy guiding investments in development and infrastructure, and if so, what the elements of that policy should be.

The ISPCP Constituency encourages registry investments in capability development and infrastructure. We propose that such investments be made a criterion in the evaluation of registry bids. If registry awards are based on free and open competition, with no presumptive right of renewal, then this will motivate bidders to include provisions for the development of capabilities and infrastructure in their proposals.