

Overview of Issues Report On Vertical Integration



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Scope and Possible Outcomes of a PDP

- A PDP is within scope of ICANN's mission and the GNSO mandate
- However, existing registry contracts have limitations on what can be a "Consensus Policy" affecting registries
- Vertical Integration does not easily fall within the topics that are appropriate for a consensus policy
- Result- a policy not likely to affect existing registries, instead would affect future agreements and would be recommendation that ICANN seek amendments of existing agreements to conform to the policy
- Not ruling out the possibility of creating Consensus Policies altogether, but would depend on the specifics of the proposed policy

Question: Once a policy is approved, can its implementation be stopped by a related PDP?

- Since the outcome of any PDP is uncertain (both from GNSO and Board), ICANN's practice is to wait until its adoption to implement it
- If it were possible, one could imagine a councilor who opposed the policy using the PDP process to delay or hinder its implementation, relying on the lower voting thresholds that apply
- Annex A of the Bylaws do not give this effect to the initiation of a PDP

Effect of a PDP on the Implementation Process

Background on New gTLD Policy:

- GNSO approval-Sept 07, Board approval-June 08
 - Staff directed by Board to develop implementation plan with Community input, for Board approval
 - Stopping implementation process for PDP would be contrary to the Board's instructions
- New gTLD policy included requirements for registry agreement:
 - **Recommendation 10: There must be a base contract provided to applicants at the beginning of the application process.**
 - If new PDP policy is not approved by GNSO/Board before the first round, the registry agreement would not reflect new policy

Historical Role of the GNSO Council on Vertical Integration

- No Prior Policy Recommendation on this Issue
 - GNSO did not address this topic when it developed its New gTLD policy
 - Addressing the issue now could be too late to affect the initial round of applications
- Current practice has varied over time in response to changing market conditions
- Past changes to the practice did not require GNSO approval, but were done through the renewal or rebid process with each registry
- Continuing to resolve this issue through the implementation process is consistent with the ICANN Bylaws
- GNSO input is valued and encouraged through the implementation process

Options for the GNSO to Consider in deciding whether to commence a PDP at this time

- Bandwidth concerns- with this complex and controversial issue, how will the pending GNSO priorities and projects be affected to accommodate this PDP
- Consider less formal approaches to provide timely and more effective input to the implementation process
 - Coordinating responses to the future public comment periods
 - Develop additional implementation guidelines for consideration in developing next version of DAG
- Recommend delay PDP for 1-2 years to gather data evaluate initial impact of distribution model, to see if a GNSO policy could help promote competition
 - Future PDP could focus on specific rules to address conduct causing the harm

Questions?