ICANN Generic Names Supporting Organisation

GNSO Council Report to the ICANN Board

Recommendation for Domain Tasting

Prepared by ICANN Staff
25 April 2008

GNSO Council Report to the ICANN Board

Domain Tasting

1. ABSTRACT

On 17 April the GNSO Council approved by super majority vote a draft motion to discourage use of the "add grace period" (AGP), where domains can be returned within five days without cost, for domain tasting. The Council approved the motion by a supermajority of 19 in favour and 4 opposed, thus, under the GNSO bylaws, support for the motion is deemed to reflect the view of the Council and is conveyed as the Council's recommendation.

In May 2007, ICANN's At-Large Advisory Committee (ALAC), asked the GNSO Council to review the issue of "domain tasting," where an entity registers a domain name and then tests to see if the name has sufficient traffic to provide more income than the annual registration fee (usually through pay-per-click advertising). If the name is profitable, it is kept. If not, the AGP is used to return the domain at no cost to the registry. Many community members feel the AGP should not be used to facilitate tasting. The ALAC request to the GNSO Council identified five areas of potential concern for Internet users:

1. Potential destabilization of the domain name system through excessive operational load on registry systems;
2. Creation of consumer confusion as names quickly appear and disappear, or as users are redirected to advertising or otherwise confusing sites;
3. Potential increased costs and burdens of legitimate registrants and service providers;
4. Facilitation of trademark abuse, where existing dispute resolution mechanisms may not be sufficiently timely or cost-effective for trademark holders to use against short-term infringement; and
5. Facilitation of criminal activity including phishing and pharming.

Following extensive fact finding and policy development activities (detailed in Section 3 Background, below), on 6 March, the GNSO Council voted to solicit public comments on a draft motion to curb domain tasting. The text of the motion can be found at: http://gnso.icann.org/issues/domain-tasting/dnt-motion-6mar08.shtml and is set forth in full in Annex 2. The language would prohibit any gTLD operator that has implemented an add grace period from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. An exemption from the limitation may be sought for a particular month, upon a showing of extraordinary circumstances, as detailed in the motion.

The public comments and constituency statements received prior to Council action reflect a plurality of views on what should be done to eliminate abuse of the AGP to facilitate domain tasting. Over time the community defined three potential options (among a broader number initially discussed) including:

1. implementing a policy change such as that defined in the motion described above;

2. eliminating the AGP entirely; or

3. changing the ICANN budget to charge the USD .20 annual fee for all registrations.

There are strongly held views throughout the ICANN community on these options, described further in Section 4 below.

Also during the 17 April GNSO Council meeting, the registrar constituency offered an amendment to the draft motion that would have made implementation of the above-described motion contingent on a finding that the budget change that would charge the annual ICANN fee for all new registered domains was unsuccessful in curbing domain tasting. The amendment would also have established a threshold allowance of 10% of new registrations for which the annual fee would not apply. This amendment was defeated with 11 votes opposed, six in favour and six abstentions.

2. BOARD REPORT REQUIREMENTS

According to the GNSO's policy development process, the GNSO Council's "Board Report" must contain the following elements:

a. A clear statement of any Supermajority Vote recommendation of the Council;

The GNSO Council considered the *Final Report on Domain Tasting* and the public comments and constituency statements at its meeting of 17 April 2008.

The GNSO Council voted as quoted in the minutes and recorded on MP3
http://audio.icann.org/gnso/gnso-council-20080417.mp3
The motion carried with a supermajority vote as defined in Annex A, Section 16 of the ICANN bylaws.

b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;

N/A

c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;

This is included in full in the constituency statements found in Annexes 1 and 2 of the GNSO Final Report on Domain Tasting, http://gnso.icann.org/issues/domain-tasting/gnso-final-report-domain-tasting-04apr08.pdf

d. An analysis of the period of time that would likely be necessary to implement the policy;

It will be important to consider the time needed to implement this new policy. The Registry Constituency statement notes the potential need to amend existing registry agreements and the need to coordinate implementation efforts with registrars. The .Com agreement requires that "the Registry Operator shall be

afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Specifications or Policies in which to comply with such policy or specification, taking into account any urgency involved".

In addition, the motion approved by the Council allows a registrar to seek an exemption from the application of the restriction for any particular month, and each applicable gTLD registry will need to report to ICANN all registrars who sought an exemption as part of its routine reporting requirements. Implementation may therefore require changes in current processes for registrars and registries. Registry comments note further that each registry or sponsor would need to determine the time needed to implement the new policy, including providing adequate notice to registrars.

ICANN staff will be developing an implementation plan that considers these factors.

e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;

None used.

f. The Final Report submitted to the Council;

The Final Report may be found at: http://gnso.icann.org/issues/domain-tasting/gnso-final-report-domain-tasting-04apr08.pdf

g. A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

Please see Annex 1.

3. Background

In May 2007, ICANN's At-Large Advisory Committee (ALAC), asked the GNSO Council to review the issue of "domain tasting," where an entity registers a domain name and then tests to see if the name has sufficient traffic to provide more income than the annual registration fee (usually through pay-per-click advertising). If the name is profitable, it is kept. If not, the AGP is used to return the domain at no cost to the registrant.

Many community members feel the AGP should not be used to facilitate tasting. The ALAC request to the GNSO Council identified five areas of potential concern for Internet users:

1. Potential destabilization of the domain name system through excessive operational load on registry systems;
2. Creation of consumer confusion as names quickly appear and disappear, or as users are redirected to advertising or otherwise confusing sites;

3. Potential increased costs and burdens of legitimate registrants and service providers;
4. Facilitation of trademark abuse, where existing dispute resolution mechanisms may not be sufficiently timely or cost-effective for trademark holders to use against short-term infringement; and
5. Facilitation of criminal activity including phishing and pharming.

Following this request, in May 2007, the GNSO Council called for an Issues Report on domain tasting from ICANN staff. This Issues Report, available at http://gnso.icann.org/issues/domain-tasting/gnso-domain-tasting-report-14jun07.pdf, was discussed at the ICANN San Juan meeting, where the Council on 27 June 2007 decided to establish an ad hoc group for further fact-finding. The ad hoc group delivered an Outcomes Report on 4 October 2007, available at http://gnso.icann.org/drafts/gnso-domain-tasting-adhoc-outcomes-report-final.pdf . These reports, taken together, provide extensive documentation about the volumes and consequences of domain tasting, and in particular the increasing use of the add grace period for the purpose of tasting domain names. They also discuss how best to discourage abuse of the AGP for domain tasting. Three potential mechanisms were discussed in particular: 1) making changes to the add grace period, such as eliminating the add grace period entirely; 2) making the ICANN transaction fee apply to deletes within the add grace period; and 3) making contractual changes in individual registry agreements with ICANN, such as imposing an "excessive deletion fee" as was done by PIR in June 2007. These reports also consider other consequences if such mechanisms were implemented, for example, whether elimination of the add grace period could limit the ability to correct typographical errors or detect fraudulent activity. Based on these reports and further discussions at the ICANN Los Angeles meeting, the GNSO Council resolved on 31 October 2007 to launch a policy development process on domain tasting.

In approving the 31 October resolution (see Decision 1 at http://gnso.icann.org/meetings/minutes-gnso-31oct07.shtml), the GNSO Council also encouraged ICANN staff "to apply ICANN's fee collections to names registered and subsequently deregistered during the add-grace period". Subsequently, on 29 January 2008, the ICANN Board voted to "encourage ICANN's budgetary process to include fees for all domains added, including domains added during the AGP, and encourage[s] community discussion involved in developing the ICANN budget, subject to both Board approval and registrar approval of this fee." http://www.icann.org/announcements/announcement-29jan08.htm. ICANN staff has pursued this option and the measure is included in the proposed budget, posted at http://www.icann.org/announcements/announcement-2-04feb08.htm.

At the outset of the policy development process on domain tasting, an Initial Report was produced for public comment, outlining the policy development process, possible actions to be taken to curb domain tasting, and the arguments put forward for and against the various options. Public comments were then incorporated into a draft Final Report (posted 8 February), http://www.gnso.icann.org/drafts/draft-final-report-domain-tasting-08feb08.pdf, which was also submitted to the GNSO Council. These reports document constituency views and public comments about the subject

of domain tasting and a plurality of viewpoints about the options that should be considered to curb the practice. The GNSO constituency statements reflect a variety of perspectives on the effects of domain tasting, and important insights regarding the mechanisms that should be considered to discourage the practice. While opinions vary, there is a consensus that measures should be considered to reduce domain tasting and that the add grace period should not be exploited for tasting purposes. However, constituency views and public comments reflect differing views on the steps that should be implemented to curb tasting. In addition, there are differing views about the potential effectiveness of various options. These are described further in Section 4, Discussion of Issues.

On 6 March, the GNSO Council voted to solicit public comments on a draft motion to curb domain tasting. The text of the motion can be found at: http://gnso.icann.org/issues/domain-tasting/dnt-motion-6mar08.shtml. The language would prohibit any gTLD operator that has implemented an add grace period from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. An exemption from the limitation may be sought for a particular month, upon a showing of extraordinary circumstances, as detailed in the motion.

The public comments and constituency statements received prior to Council action reflect a plurality of views on what should be done to eliminate abuse of the AGP to facilitate domain tasting. Over time the community defined three potential options (among a broader number initially discussed) including:

1. implementing a policy change such as that defined in the motion described above;

2. eliminating the AGP entirely; or

3. changing the ICANN budget to charge the USD .20 annual fee for all registrations.

On 17 April the GNSO Council approved by super majority vote a motion to discourage use of the "add grace period" (AGP), where domains can be returned within five days without cost, for domain tasting. The Council approved the motion by a supermajority of 19 in favour and 4 opposed, thus, under the GNSO bylaws, support for the motion is deemed to reflect the view of the Council and is conveyed as the Council's recommendation.

Also during the 17 April GNSO Council meeting, the registrar constituency offered an amendment to the draft motion that would have made implementation of the above-described motion contingent on a finding that the budget change that would charge the annual ICANN fee for all new registered domains was unsuccessful in curbing domain tasting. The amendment would also have established a threshold allowance of 10% of new registrations for which the annual fee would not apply. This amendment was defeated with 11 votes opposed, six in favour and six abstentions.

4. Discussion of Issues

There is a consensus that the AGP should not be abused for the purpose of domain tasting. However, public comments and constituency statements reflect a plurality of views on what should be done to eliminate abuse of the AGP to facilitate domain tasting. Over time the community has focused on three potential options (among a broader number initially discussed) including:

1. implementing a policy change such as that defined in the draft motion – to prohibit any gTLD operator that has implemented an AGP from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. An exemption from the limitation may be sought for a particular month, upon a showing of extraordinary circumstances detailed in the motion;

2. eliminating the AGP entirely; or

3. changing the ICANN budget to charge the USD .20 annual fee for all registrations.

There are strongly held views throughout the ICANN community, as noted below.

Key stakeholders and their positions are:

   1. Views on the motion described above:

   This motion is supported by the Intellectual Property Constituency, the Business Constituency, the Non-Commercial Users Constituency, the Registry Constituency and the At Large Advisory Committee. The ISP Constituency has generally supported all reasonable means to curb exploitation of the AGP. While the Registry Constituency also supported the motion, some registries and registrars objected to initiation of a policy development process on domain tasting for a number of reasons, noting that certain steps should have been taken before initiating a PDP. Members of the registry constituency have several concerns including concerns that: 1) a one-size-fits-all policy will not work for all registries; 2) the process that led to these options did not adequately assess the potential effectiveness and impact of various options; and 3) if the resolution is approved by the ICANN, the proposed budget change discussed in #3 below should not be instituted. Some registrars did not support initiation of a policy development process, instead preferring other means, including potential changes to the ICANN budget, in lieu of launching a PDP.

   Several constituencies raised concerns about the "extraordinary circumstances" provision. The IPC suggests that more guidance be provided about the definition and scope of the exemption to avoid exploitation beyond the intended purpose. The NCUC takes the alternative view, stating that the proposal is "narrowly tailored" and preserves an appropriate amount of flexibility for registrars and registries.

2. Views on eliminating the AGP entirely:

The GNSO constituencies reflect a variety of views regarding the AGP. The NCUC in its comments of 7 December, 2007 raises concerns about complete elimination of the AGP, noting that the AGP may provide benefits to both registrants and registrars. These comments recommend other options that would "preserve the other advantages of the AGP". Some of the proponents of the draft resolution would have preferred to see the elimination of the AGP but are supporting the resolution language as a compromise, recognizing that many registrars and registries view the AGP as extremely valuable for a number of reasons. The Business Constituency, in its updated statement of 27 March 2008 reinforces its earlier view that the AGP should be eliminated entirely or ICANN should implement a combination of both a non-refundable ICANN fee as proposed by the ICANN Board, and the "excess delete fees" as proposed in the GNSO's recommended motion. The ALAC comments note that while some constituency representatives would have preferred elimination of the AGP, the ALAC recognizes that the proposed action contained in the motion is relatively aggressive when compared with alternative means that have been discussed to curb domain tasting. The ALAC also supported the monitoring provision contained in the motion, which requires staff to report on the effectiveness of the proposed limitation and the extent to which the provisions have been implemented by registrars and registries.

Others in the broader ICANN community do continue to support elimination of the AGP as the only effective way to eliminate domain tasting. Proponents suggested that there might be alternative means that could be used to enable registrars to perform the same kind of purchase verification and anti-fraud functions enabled by the AGP.

Many registrars and registries caution that eliminating the AGP would be an extreme measure with many negative implications. They are concerned that eliminating the AGP would only remove the ability to exploit the AGP for domain tasting purposes. It would not actually be effective in eliminating domain tasting.

3. Views on the proposed change to the ICANN budget to charge the $.20 fee on all registrations.

Though not all constituencies commented on the matter, the Intellectual Property Constituency and the Business Constituency support changing the ICANN fee in addition to adopting the draft motion, recommending that both are needed to eliminate domain tasting. The Registry Constituency opposes charging the ICANN fee if the resolution is implemented, calling it an "unjustified tax on registrants" because the fee is also charged for "legitimate, non-abusive deletions". Other stakeholders, such as the ALAC and at least some registrars, also reject adopting this fee if the resolution is implemented quickly.

We also note here that following publication of the GNSO Final Report, which contained a summary of public views and constituency statements, concerns were

raised by some members of the community that the summary was written in a "one-sided manner" and that some public comments were neglected or trivialized. While staff does not concur and stands by the original document as drafted, it is important to document that dissenting views are registered and noted.

ANNEX 1 – 17 April extract from the Council meeting minutes on domain tasting

17 April 2008

List of attendees:
Philip Sheppard - Commercial & Business Users C
Mike Rodenbaugh - Commercial & Business Users C.
Bilal Beiram - Commercial & Business Users C
Greg Ruth - ISCPC
Antonio Harris - ISCPC
Tony Holmes - ISCPC
Thomas Keller- Registrars
Tim Ruiz - Registrars
Adrian Kinderis - Registrars
Chuck Gomes - gTLD registries
Edmon Chung - gTLD registries
Jordi Iparraguirre - gTLD registries
Kristina Rosette - Intellectual Property Interests C
Ute Decker - Intellectual Property Interests C - part attendance due to network issues
Cyril Chau - Intellectual Property Interests C
Robin Gross - NCUC - absent, excused
Norbert Klein - NCUC
Carlos Souza - NCUC - absent
Olga Cavalli- Nominating Committee appointee
Jon Bing - Nominating Committee appointee - absent excused
Avri Doria - Nominating Committee appointee

18 Council Members
(24 Votes - quorum)

ICANN Staff

Denise Michel - Vice President, Policy Development
Robert Hoggarth - Senior Policy Director
Liz Gasster - Senior Policy Officer
Olof Nordling - Manager, Policy Development Coordination
Patrick Jones - Registry Liaison Manager
Kurt Pritz - Senior Vice President, Services
Glen de Saint Géry - GNSO Secretariat

GNSO Council Liaisons
Suzanne Sene - GAC Liaison - absent
Alan Greenberg - ALAC Liaison - absent - apologies

Rita Rodin - ICANN Board member - absent - apologies
Bruce Tonkin - ICANN Board member - absent apologies

MP3 Recording

Avri Doria chaired the meeting.

**Item 10: Domain Tasting Policy Development Process (PDP) discussion/vote
http://gnso.icann.org/issues/domain-tasting/gnso-final-report-domain-tasting-
04apr08.pdf**

Avri Doria read the motion proposed by **Mike Rodenbaugh** and seconded by **Bilal
Beiram** and **Kristina Rosette**

Whereas, the GNSO Council has discussed the Issues Report on Domain Tasting
and the Final Outcomes Report of the ad hoc group on Domain Tasting;

Whereas, the GNSO Council resolved on 31 October 2007 to launch a PDP on
Domain Tasting;

Whereas, the GNSO Council authorized on 17 January 2008 the formation of a small
design team to develop a plan for the deliberations on the Domain Tasting PDP (the
"Design Team"), the principal volunteers to which had been members of the Ad Hoc
Group on Domain Tasting and were well-informed of both the Final Outcomes
Report of the Ad Hoc Group on Domain Tasting and the GNSO Initial Report on
Domain Tasting (collectively with the Issues Report, the "Reports on Domain
Tasting");

Whereas, the GNSO Council has received the Draft Final Report on Domain Tasting;

Whereas, PIR, the .org registry operator, has amended its Registry Agreement to
charge an Excess Deletion Fee; and both NeuStar, the .biz registry operator, and
Afilias, the .info registry operator, are seeking amendments to their respective
Registry Agreements to modify the existing AGP;

The GNSO Council recommends to the ICANN Board of Directors that:

1. The applicability of the Add Grace Period shall be restricted for any gTLD which
has implemented an AGP ("Applicable gTLD Operator").
Specifically, for each Applicable gTLD Operator:

a. During any given month, an Applicable gTLD Operator may not offer any refund to
a registrar for any domain names deleted during the AGP that exceed (i) 10% of that
registrar's net new registrations in that month (defined as total new registrations less
domains deleted during AGP), or
(ii) fifty (50) domain names, whichever is greater.

b. A Registrar may seek an exemption from the application of such restriction in a specific month, upon the documented showing of extraordinary circumstances. For any Registrar requesting such an exemption, the Registrar must confirm in writing to the Registry Operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside of the Registrar's control. Acceptance of any exemption will be at the sole reasonable discretion of the Registry Operator, however "extraordinary circumstances" which reoccur regularly will not be deemed extraordinary.

c. In addition to all other reporting requirements to ICANN, each Applicable gTLD Operator shall identify each Registrar that has sought an exemption, along with a brief descriptive identification of the type of extraordinary circumstance and the action (if any) that was taken by the Applicable gTLD Operator.

2. Implementation and execution of these recommendations shall be monitored by the GNSO. Specifically;

a. ICANN Staff shall analyze and report to the GNSO at six month intervals for two years after implementation, until such time as the GNSO resolves otherwise, with the goal of determining;

i. How effectively and to what extent the policies have been implemented and followed by Registries and Registrars, and

ii. Whether or not modifications to these policies should be considered by the GNSO as a result of the experiences gained during the implementation and monitoring stages,

b. The purpose of these monitoring and reporting requirements are to allow the GNSO to determine when, if ever, these recommendations and any ensuing policy require additional clarification or attention based on the results of the reports prepared by ICANN Staff.

Adrian Kinderis, on behalf of the Registrar constituency, proposed a friendly amendment, to the motion,
adding :

Whereas, the GNSO Council resolved on 31 October 2007 to encourage staff to apply ICANN's fee collections to names registered and subsequently deregistered during the add-grace period;

Whereas, the Board resolved on 23 January 2008 to encourage ICANN's budgetary process to include fees for all domains added, including domains added during the AGP;

1. The Staff continue the budgetary process towards approval with the inclusion of fees for all domains added, including domains added during AGP as directed in the

Board resolution of 23 January 2008;
*2. An allowance for a reasonable number of deletes as quantified in 4.a.i below be
included against which the fees would not apply;*
*3. Upon approval of the budget including said fees and reasonable allowance, the
deletes activity within the AGP shall be monitored by the GNSO. Specifically:*
*a. ICANN Staff shall analyze and report to the GNSO within three months as to how
effectively and to what extent the fees have reduced AGP delete activity;*
*b. Whether or not further policy work should be considered by the GNSO as a result
of the experiences gained during the monitoring stage.*
*4. Upon conclusion of the monitoring stage, if Staff reports and the GNSO confirms
that the fees have not been sufficiently effective in reducing AGP delete activity, the
Staff will immediately begin implementation of the following recommendation as
Consensus Policy;*

which essentially suggested that the ICANN Board proposal

"...encourage ICANN's budgetary process to include fees for all domains added,
including domains added during the AGP, and encourages community discussion
involved in developing the ICANN budget, subject to both Board approval and
registrar approval of this fee. "

be allowed to run for the proposed period, after which there should be a review of the
performance, and if it was not deemed satisfactory, the measures proposed in the
existing motion could be applied.

Adrian added that to overlay further solutions without seeing the effect of the Board
proposal could potentially be either:
a) a waste of time or
b) unhelpful as far as determining which was the effective result.

Avri Doria proposed taking a vote on the proposal which **Kristina Rosette** did not
accept as a friendly amendment to the motion.
Avri Doria pointed out that the pending budget measure was not part of the policy
development process and could be discussed at a future meeting contingent on the
results of the vote.

Denise Michel clarified that the ICANN Board proposal was initiated by the GNSO
council (decision 1). The current status on the pending budget proposal to apply
ICANN's fee collections to names registered and subsequently deregistered during
the add-grace period (AGP) was part of ICANN's proposed budget, the next iteration
of which will be posted for further public comment, and the Board will take formal
action on the overall budget, including the Council's proposal, at the June, 2008
ICANN meetings in Paris.

Tim Ruiz commented that the Registrars were aware of the status.

Kurt Pritz clarified that, as written in the current preliminary ICANN budget, every deletion within the five day add grace period would be charged the 20 cent fee. Public comments and especially those heard from the Registrars in Delhi indicated that there should be a limited carve out of names. Although ICANN has not yet posted a revised Budget, the current thinking is along the lines of the carve out in the Afilias and NeuStar proposals.
"So while no changes are suggested yet on the ICANN side, I feel sure that such a change will be part of the budget when it moves from the preliminary phase to the proposed phase."

Philip Sheppard expressed concern about the delay and putting off action, when there was known harm in the marketplace. **Philip** posed the question whether it was the sole objective of the Board's proposal for putting this fee on a solution for tasting or were there other objectives?

Kurt Pritz responded that it was the sole objective.

Kristina Rosette supported **Philip Sheppard's** concerns.

Tim Ruiz added that the Registrars were concerned that if both the budget proposal and the Council motion were approved there would potentially be multiple tasks to implement and track, while the proposed budget fee alone may resolve the problem.

Chuck Gomes reminded Council that a fee change could only occur when the ICANN Board approved the Budget.

Mike Rodenbaugh supported the concern expressed by **Kristina Rosette** and **Philip Sheppard** about delaying action. He reiterated that for those who wanted the AGP eliminated altogether, the motion represented diligent work and serious compromise. The drafting team was aware of the budget issue, constituency statements and public comments, and there was the assumption that both the budget implementation and the motion would be approved, so, in conjunction, the two remedies would address domain tasting.

Tony Holmes supported this view.

Kristina Rosette commented that the ICANN Board passed the motion in full knowledge that the PDP was ongoing and thus disagreed with the premise of the amendment being put forward. In terms of the implementation issues Tim Ruiz raised, Kristina commented that since the Afilias and NeuStar proposals had already been approved, registrars would be working towards system implementation and tracking without further delay.

Adrian Kinderis cautioned about swaying the Council votes by believing there was popular consensus on the existing motion. He reiterated that the Board proposal should be given a chance and that there were no guarantees that the timelines would be different if the existing motion was approved.

Chuck Gomes commented that the budget approach would lead to more rapid results because the fee change would be implemented on July 1, 2008 if the Board approved the original motion on the table during the ICANN meetings in Paris in June 2008.
The registry constituency representatives on the Council would have to receive input from the entire constituency prior to voting on the amendment.

Chuck Gomes complimented the Registrars on the amendment's wording that minimized delays.

Avri Doria commented that she was one of those in favour of eliminating the AGP and appreciated that the motion on the table was a considerable compromise.

Tim Ruiz clarified that the amended motion stated "ICANN staff shall analyze the report to the GNSO within three months" and during that time period the registrars would know whether the measure was effective or not.

Avri Doria clarified that the amendment would need a majority of the Council votes to become a motion to be voted on.

Adrian Kinderis, seconded by **Tim Ruiz** proposed:

Whereas, the GNSO Council has discussed the Issues Report on Domain Tasting and the Final Outcomes Report of the ad hoc group on Domain Tasting;
Whereas, the GNSO Council resolved on 31 October 2007 to launch a PDP on Domain Tasting;

Whereas, the GNSO Council resolved on 31 October 2007 to encourage staff to apply ICANN's fee collections to names registered and subsequently deregistered during the add-grace period;

Whereas, the Board resolved on 23 January 2008 to encourage ICANN's budgetary process to include fees for all domains added, including domains added during the AGP;

Whereas, the GNSO Council authorized on 17 January 2008 the formation of a small design team to develop a plan for the deliberations on the Domain Tasting PDP (the "Design Team"), the principal volunteers to which had been members of the Ad Hoc Group on Domain Tasting and were well-informed of both the Final Outcomes Report of the Ad Hoc Group on Domain Tasting and the GNSO Initial Report on Domain Tasting
(collectively with the Issues Report, the "Reports on Domain Tasting");

Whereas, the GNSO Council has received the Draft Final Report on Domain Tasting;

Whereas, PIR, the .org registry operator, has amended its Registry Agreement to charge an Excess Deletion Fee; and both NeuStar, the .biz registry operator, and

Afilias, the .info registry operator, are seeking amendments to their respective Registry Agreements to modify the existing AGP;

The GNSO Council recommends to the ICANN Board of Directors that:

1. The Staff continue the budgetary process towards approval with the inclusion of fees for all domains added, including domains added during AGP as directed in the Board resolution of 23 January 2008;

2. An allowance for a reasonable number of deletes as quantified in 4.a.i below be included against which the fees would not apply;

3. Upon approval of the budget including said fees and reasonable allowance, the deletes activity within the AGP shall be monitored by the GNSO. Specifically:

a. ICANN Staff shall analyze and report to the GNSO within three months as to how effectively and to what extent the fees have reduced AGP delete activity;

b. Whether or not further policy work should be considered by the GNSO as a result of the experiences gained during the monitoring stage.

4. Upon conclusion of the monitoring stage, if Staff reports and the GNSO confirms that the fees have not been sufficiently effective in reducing AGP delete activity, the Staff will immediately begin implementation of the following recommendation as Consensus Policy;

a. The applicability of the Add Grace Period shall be restricted for any gTLD which has implemented an AGP ("Applicable gTLD Operator"). Specifically, for each Applicable gTLD Operator:

i. During any given month, an Applicable gTLD Operator may not offer any refund to a registrar for any domain names deleted during the AGP that exceed (i) 10% of that registrar's net new registrations in that month (defined as total new registrations less domains deleted during AGP), or (ii) fifty (50) domain names, whichever is greater.

ii. A Registrar may seek an exemption from the application of such restriction in a specific month, upon the documented showing of extraordinary circumstances. For any Registrar requesting such an exemption, the Registrar must confirm in writing to the Registry Operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside of the Registrar's control. Acceptance of any exemption will be at the sole reasonable discretion of the Registry Operator, however "extraordinary circumstances" which reoccur regularly will not be deemed extraordinary.

iii. In addition to all other reporting requirements to ICANN, each Applicable gTLD Operator shall identify each Registrar that has sought an exemption, along with a brief descriptive identification of the type of extraordinary circumstance and the

action (if any) that was taken by the Applicable gTLD Operator.

b. Implementation and execution of these recommendations shall be monitored by the GNSO. Specifically;

i. ICANN Staff shall analyze and report to the GNSO at six month intervals for two years after implementation, until such time as the GNSO resolves otherwise, with the goal of determining;

1. How effectively and to what extent the policies have been implemented and followed by Registries and Registrars, and

2. Whether or not modifications to these policies should be considered by the GNSO as a result of the experiences gained during the implementation and monitoring stages,

ii. The purpose of these monitoring and reporting requirements are to allow the GNSO to determine when, if ever, these recommendations and any ensuing policy require additional clarification or attention based on the results of the reports prepared by ICANN Staff.

The motion failed.

7 Votes in favour: Adrian Kinderis, Tim Ruiz, Tom Keller (two votes each) Olga Cavalli (one vote)

10 Votes against: Philip Sheppard, Mike Rodenbaugh, Bilal Beiram, Kristina Rosette, Cyril Chua, Tony Holmes, Tony Harris, Greg Ruth, Norbert Klein, Avri Doria, (one vote each)

6 Abstentions: Chuck Gomes, Jordi Iparraguirre, Edmon Chung (two votes each)

Ute Decker had bad network connectivity and was cut off the call for the vote.
Absent: Robin Gross, Carlos Souza, Jon Bing

The Registry Constituency representatives abstained because they were required to get direction from the entire Registry constituency before voting.

Avri Doria called for a roll call vote on the motion proposed by **Mike Rodenbaugh** and seconded by **Bilal Beiram** and **Kristina Rosette.**

The motion passed by a supermajority.

19 Votes in favour: Philip Sheppard, Mike Rodenbaugh, Bilal Beiram, Kristina Rosette, Cyril Chua, Tony Holmes, Tony Harris, Greg Ruth, Norbert Klein, Avri Doria, Olga Cavalli (one vote each)

Tom Keller, Chuck Gomes, Jordi Iparraguirre, Edmon Chung (two votes each)

4 Votes against: Adrian Kinderis, Tim Ruiz (two votes each)

Ute Decker - had bad network connectivity and was cut off the call for the vote.
Absent: Robin Gross, Carlos Souza, Jon Bing

Decision 3:

Whereas, the GNSO Council has discussed the Issues Report on Domain Tasting and the Final Outcomes Report of the ad hoc group on Domain Tasting;

Whereas, the GNSO Council resolved on 31 October 2007 to launch a PDP on Domain Tasting;

**Whereas, the GNSO Council authorized on 17 January 2008 the formation of a small design team to develop a plan for the deliberations on the Domain Tasting PDP (the "Design Team"), the principal volunteers to which had been members of the Ad Hoc Group on Domain Tasting and were well-informed of both the Final Outcomes Report of the Ad Hoc Group on Domain Tasting and the GNSO Initial Report on Domain Tasting
(collectively with the Issues Report, the "Reports on Domain Tasting");**

Whereas, the GNSO Council has received the Draft Final Report on Domain Tasting;

Whereas, PIR, the .org registry operator, has amended its Registry Agreement to charge an Excess Deletion Fee; and both NeuStar, the .biz registry operator, and Afilias, the .info registry operator, are seeking amendments to their respective Registry Agreements to modify the existing AGP;

The GNSO Council recommends to the ICANN Board of Directors that:

1. The applicability of the Add Grace Period shall be restricted for any gTLD which has implemented an AGP ("Applicable gTLD Operator"). Specifically, for each Applicable gTLD Operator:

**a. During any given month, an Applicable gTLD Operator may not offer any refund to a registrar for any domain names deleted during the AGP that exceed (i) 10% of that registrar's net new registrations in that month
(defined as total new registrations less domains deleted during AGP), or (ii) fifty (50) domain names, whichever is greater.**

b. A Registrar may seek an exemption from the application of such restriction in a specific month, upon the documented showing of extraordinary circumstances. For any Registrar requesting such an exemption, the Registrar

must confirm in writing to the Registry Operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside of the Registrar's control. Acceptance of any exemption will be at the sole reasonable discretion of the Registry Operator, however "extraordinary circumstances" which reoccur regularly will not be deemed extraordinary.

c. In addition to all other reporting requirements to ICANN, each Applicable gTLD Operator shall identify each Registrar that has sought an exemption, along with a brief descriptive identification of the type of extraordinary circumstance and the action (if any) that was taken by the Applicable gTLD Operator.

2. Implementation and execution of these recommendations shall be monitored by the GNSO. Specifically;

a. ICANN Staff shall analyze and report to the GNSO at six month intervals for two years after implementation, until such time as the GNSO resolves otherwise, with the goal of determining;

i. How effectively and to what extent the policies have been implemented and followed by Registries and Registrars, and

ii. Whether or not modifications to these policies should be considered by the GNSO as a result of the experiences gained during the implementation and monitoring stages,

b. The purpose of these monitoring and reporting requirements are to allow the GNSO to determine when, if ever, these recommendations and any ensuing policy require additional clarification or attention based on the results of the reports prepared by ICANN Staff.

Kristina Rosette asked for confirmation that the motion voted on by Council would be submitted to the Board in time for the ICANN Board meeting in June 2008 in Paris and staff confirmed that was the intention.

ANNEX 2 – Text of domain tasting motion approved by the GNSO Council 17 April, 2008

Whereas, the GNSO Council has discussed the Issues Report on Domain Tasting and the Final Outcomes Report of the ad hoc group on Domain Tasting;

Whereas, the GNSO Council resolved on 31 October 2007 to launch a PDP on Domain Tasting;

Whereas, the GNSO Council authorized on 17 January 2008 the formation of a small design team to develop a plan for the deliberations on the Domain Tasting PDP (the "Design Team"), the principal volunteers to which had been members of the Ad Hoc Group on Domain Tasting and were well-informed of both the Final Outcomes Report of the Ad Hoc Group on Domain Tasting and the GNSO Initial Report on Domain Tasting (collectively with the Issues Report, the "Reports on Domain Tasting");

Whereas, the GNSO Council has received the Draft Final Report on Domain Tasting;

Whereas, PIR, the .org registry operator, has amended its Registry Agreement to charge an Excess Deletion Fee; and both NeuStar, the .biz registry operator, and Afilias, the .info registry operator, are seeking amendments to their respective Registry Agreements to modify the existing AGP;

The GNSO Council recommends to the ICANN Board of Directors that:

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Specifically, for each Applicable gTLD Operator:

a. During any given month, an Applicable gTLD Operator may not offer any refund to a registrar for any domain names deleted during the AGP that exceed (i) 10% of that registrar's net new registrations in that month (defined as total new registrations less domains deleted during AGP), or
(ii) fifty (50) domain names, whichever is greater.

b. A Registrar may seek an exemption from the application of such restriction in a specific month, upon the documented showing of extraordinary circumstances. For any Registrar requesting such an exemption, the Registrar must confirm in writing to the Registry Operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside of the Registrar's control. Acceptance of any exemption will be at the sole reasonable discretion of the Registry Operator, however "extraordinary circumstances" which reoccur regularly will not be deemed extraordinary.

c. In addition to all other reporting requirements to ICANN, each Applicable gTLD Operator shall identify each Registrar that has sought an exemption, along with a brief descriptive identification of the type of extraordinary circumstance and the action (if any) that was taken by the Applicable gTLD Operator.

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i. How effectively and to what extent the policies have been implemented and followed by Registries and Registrars, and

ii. Whether or not modifications to these policies should be considered by the GNSO as a result of the experiences gained during the implementation and monitoring stages,

b. The purpose of these monitoring and reporting requirements are to allow the GNSO to determine when, if ever, these recommendations and any ensuing policy require additional clarification or attention based on the results of the reports prepared by ICANN Staff.

19 Votes in favour. The motion passed by a supermajority.

19 Votes in favour: Philip Sheppard, Mike Rodenbaugh, Bilal Beiram, Kristina Rosette, Cyril Chua, Tony Holmes, Tony Harris, Greg Ruth, Norbert Klein, Avri Doria, Olga Cavalli (one vote each)

Tom Keller, Chuck Gomes, Jordi Iparraguirre, Edmon Chung (two votes each)

4 Votes against: Adrian Kinderis, Tim Ruiz (two votes each)

Ute Decker had bad network connectivity and was cut off the call for the vote.
Absent: Robin Gross, Carlos Souza, Jon Bing