

Monday, April 12<sup>th</sup>

Dear VI WG,

Now is the time to rollout new competition and new gTLDs that will service the growth and future of the Net. Now is not the time to tamper with tried and true systems.

The subprime mortgage crisis in the United States was led by cries for innovation and unwinding of the regulations that had long held a steady hand in the financial markets. Few relatively small experiments ultimately had the unintended, unanticipated and domino-like effect of the collapse of multiple financial institutions. As one failure precipitated another, it soon became evident that the damage could not be constrained, or easily reversed. In the end, the public trust was lost in not only in the institutions themselves but also in the regulatory bodies which had heard but not heeded the call for restraint.

With stakes high for serving the public interest, and preserving the security and stability of the Internet, tampering with a proven model is not an option – not for us, nor for the millions of registrants, websites, listserves and other systems which depend on the domain names we offer. It is far easier to determine the right structure to drive behavior, than to police conduct after the fact.

PIR hereby submits a proposal which relies on the most basic of principles, as well as some innovative ideas. In the interest of delivering this proposal to the Working Group by the Monday deadline, we provide a framework here, and will follow with further details and explanations. We look forward to the discussion today, and in the days and weeks ahead.

Best,  
Kathy Kleiman  
Director of Policy, PIR

## **PIR Proposal**

### **I. The Main Model for New gTLD Registries and a Few Exceptions:**

The main model for new gTLD Registries will be one of full structural separation. There should be complete separation of operational resources, assets and processes, financial systems as well as separation of control. This organizational structure of complete separation ensures ease of tracking and audit. In economic terms, the organizational structure of an industry will determine the conduct of the economic actors in the industry, and this will, in turn, affect the performance of the industry in terms of its benefits to consumers. We have a Registry-Registrar system that works and has produced a robust and dynamic marketplace of registrars who serve registrants worldwide. The system was

set up early in ICANN's history, and premised on the key core beliefs that form follows function and structure dictates use. Key protections lie within the structural separations.

*Now is not the time to fundamentally change the principles that have served ICANN, but to protect registrants and the public interest. In the spirit of cooperation and work within the working group, we propose:*

#### The Main Model:

- Full Structural Separation of Registries and Registrars.
- This structural separation involves full operational separation, full financial separation, and full separation of control of the company.
- The separation must be easily and readily verifiable, and completely auditable.
- Penalties for violation must be clear, severe and rapidly implemented.
- Registry Operators shall not act as registrars with respect to their TLD. This shall not preclude Registry Operator from registering names within the TLD to itself through a request made to an ICANN-accredited registrar.
- Registry Operators shall not acquire, directly or indirectly, control of, or a greater than fifteen percent ownership interest in, any ICANN-accredited Registrar.

#### Exceptions to the Main Model

We are, of course, willing to work within our ICANN community to create exceptions to the Main Model. These exceptions have been a part of our VI discussion since the outset, and continue to dominate our dialogue and debate.

Here are the three we propose, subject to expansion as needed in narrowly-defined and narrowly-tailored circumstances.

- o First, the single-registrant gTLD. As difficult as it will be to define it, we believe it can be done. As with the other exceptions, once the registrations cross a certain pre-defined threshold, the structural separation requirements should be imposed. While this may be difficult to understand in some scenarios, it will impose a clear, verifiable and ascertainable bright line, and bypass many nuances of interpretation. We submit the number of 50,000 registrations as a starting number, and point to new studies, including the KPMG *Benchmarking of Registry Operations* as important sources of data and analyses of Registry growth and differentiation. *Benchmarking of Registry Operations, February 2010*, <http://www.icann.org/en/topics/new-gtlds/benchmarking-report-15feb10-en.pdf>.
- o Second, the Community-Based gTLD. These are TLDs applied for on behalf of small and narrowly-defined existing community. We submit

that to jump-start the registrations, lest this TLD not be of interest to the top tiered Registrars, the Registry would be allowed to be the distributor of its domain names. Once registrations cross the pre-defined threshold, as per above, the structural separation requirements will be imposed. Again, we submit that 50,000 registrations set a useful initial threshold.

- Third, the “Orphan TLD.” This remains a risk that a gTLD not catering to a small and narrowly-defined existing group, and not belonging to a properly-defined single registrant, will be so narrow or so noncommercial or of so little interest to the general public that none of the major Registrars will choose to distribute it to the public. The danger is that the TLD will “wither on the vine” unless the Registry can distribute it itself.

To prevent gaming of this TLD, or assertion of “orphan status” merely to cherry-pick the first or best names, the TLD will have to start on the “Main Model,” work hard to sign up Registrars, and fail. It must then prove to ICANN, prior to launch, that its good faith efforts to find Registrars have not succeeded and that it has not been picked up for distribution in the top three tiers of Registrars.

Once registrations cross the pre-defined threshold, as per above, the structural separation requirements will be imposed.

- Additional Exceptions. Together with the community, we are willing to explore other narrowly-defined and narrowly-tailored exceptions to ensure that no community is left underserved by gTLDs, but with the caveat that the transition of a successful exception to a regular and robust gTLD, as set out above for the other exceptions, will be insured.

Strong benefits will follow. The proposals will serve the new gTLD Registrars, Registrars, the ICANN Community and especially the public interest by safekeeping the tried and true rules founded on basic principles of structural separation and based on the basic premise of the exclusivity a Registry has in its gTLD offering. In the pursuit of innovation, it does not forsake reason for “irrational exuberance” and thus does not undertake unreasonable risks or abandon safeguards. We note the additional benefit that the system of exceptions above is verifiable through public data.

## **II. Innovative and Efficient Marketing**

In making the arguments for cross-ownership, we have heard many arguments regarding innovation. These Vertical Integration Concepts, however, share their

benefits unequally and, to the extent they exist, will benefit narrowly the set of co-owned registries and registrars.

We suggest that a much narrower set of changes to the registry-registrar relationship will foster a much wider set of innovation – and open that innovation to all Registries and Registrars equally.

Equal Access and Nondiscriminatory Practice:

All new gTLD Registries must be committed to the principle and practice of Equal Access and Nondiscriminatory Practice. Specifically we recommend that they must continue to agree that:

1. All ICANN-Accredited Registrars (including RegistryPro shareholders acting as a registrar) connect to the Registry-Registrar Protocol via the Internet by equivalent connection(s) and by utilizing the equivalent maximum number of IP addresses and SSL certificate authentications. Equivalent connection(s).
2. The Registry Operator is making commercially reasonable efforts to make both the initial version of the Registrar toolkit software required for domain name registration, and any updates to that toolkit, available to all ICANN-Accredited Registrars at the same time.
3. All ICANN-Accredited Registrars have equivalent level of access to Registry customer support personnel via telephone, e-mail or the Registry website.
4. All ICANN-Accredited Registrars have equivalent level of access to the RegistryPro Registry resources, as made available from time to time, to resolve Registry/Registrar or Registrar/Registrar disputes and technical and/or administrative customer service issues.
5. All ICANN-Accredited Registrars have equivalent level of access to Registry Data to reconcile their registration activities from registry Web and ftp servers. Each ICANN-Accredited Registrar's data will be treated as confidential, per the RegistryPro Code of Conduct.
6. All ICANN-Accredited Registrars are enabled to perform basic automated registrar account management functions using an equivalent Registrar toolkit made available to all Accredited Registrars by the Registry Operator. All account information is treated as confidential, per the RegistryPro Code of Conduct.
7. The Registry-Registrar Protocol does not include any algorithms or protocols that differentiate among ICANN-Accredited Registrars with respect to functionality, including database access, system priorities and overall performance.
8. All Registry Operator officers, directors, shareholders, employees, agents, consultants, and contractors are directed not to give preferential treatment to any individual ICANN-Accredited Registrar.

*See, for example, RegistryPro Equivalent Access Certification,*  
<http://www.icann.org/en/tlds/agreements/pro/registry-agmt-apph-12mar01.htm>

### An Innovation

However, to allow Registrars to align resources to best promote their registration services – especially to developing countries and underserved communities -- , and to open the paths to innovation between Registries and Registrars, we propose that Registrars have the right to engage in “efficient marketing” with Registries.

Efficient marketing means that Registrars may approach Registries with specific proposals to allow them, on a special basis, to target special marketing projects to developing countries, and/or underserved communities, and help jump-start new and fast-growing smaller Registrars.

This “efficient marketing” will help foster an array of competition and new ideas – and open them the widest group -- all Registrars will have the opportunity to experiment and innovate.

The public interest will be strongly served by the continuation of robust competition among Registrars, and the strongest support of Registrars, registrants, and new, growing and underserved communities. The finest talent and ideas will be tapped to reach out far into communities and provide individuals, organizations, companies and communities with new gTLDs which serve unmet needs, and those of the future.

It is a limited change, rather than a dramatic change, and one which keeps the structural separation and preserves the separate DNS spaces of Registries and Registrars.

### **III. Conclusion:**

The subprime mortgage crisis in the United States teaches us something fundamental: tampering with and removing existing safeguards of an interconnected industry and depending on the market to “right itself” (should something inevitably go wrong), is unwise beyond measure. In the mortgage scenario, it would have been far better to maintain the original system of checks and balances, rather than assume that any unintended consequences would be rapidly isolated and readily remedied by market forces.

Here too, in the DNS system, it is better to stick with the structural separation that works, and then innovate as necessary to foster robust competition of Registrars, innovation in marketing and service to diverse communities. That serves the public interest.