

Communication from Registrar Stakeholder Group to ICANN Community

40th ICANN Meeting
San Francisco, California, USA

17 March 2011

Purpose of this communication

This communication will document positions of the Registrar Stakeholder Group (RrSG) either articulated at or resulting from interaction with the ICANN Board of Directors, Governmental Advisory Group (GAC), Registry Stakeholder Group (RySG), Generic Names Supporting Organization (GNSO), At Large Advisory Committee (ALAC), and others in the community during the Silicon Valley-San Francisco meeting, 13-18 March 2011.

Executive Summary

- The RrSG is enthusiastic about cooperating with the community on issues of mutual concern and will do so at every reasonable opportunity. However, the stability and security of the domain name system, and of registrars' technical and business functions, rely on the continuing integrity of ICANN processes. Distortion of policy processes or expansion of the role of the Registrar Accreditation Agreement is inappropriate and unwarranted.
- The RrSG is supportive of the introduction of new generic top-level domains (gTLDs), with appropriate protections for rights holders. It is critical, however, that registrars are consulted regularly during their introduction so we can share our understanding of operational impacts to the domain name system. We encourage the community to be mindful of parameters that may be imposed on new TLDs, as some will increase consumer costs.
- Registrars encourage the community to approach the RrSG prior to assuming the need for new policy, to discuss needs and registrars' role in resolving issues. Too often, policy proposals do not fully contemplate technical, business and operational considerations. Proactive engagement with our members will avoid community frustration and will assure that resolutions are funneled through correct policy channels.
- The RrSG confirms its ongoing consultation and cooperation with the law enforcement community, most recently at its meeting in Brussels in February 2011. This productive discussion will result in further cooperation between registrars and law enforcement agencies to reduce criminal activity taking place on the Internet.
- The RrSG gratefully thanks the ICANN community, and in particular the meeting team, for its flexibility and accommodation during the Silicon Valley-San Francisco meeting.

Registrar perspective

Registrars operate in a highly competitive environment and are focused on the needs of their registrant customers as they operate their businesses. While seeking new opportunities and expanding customer relationships, registrars continually work toward security and stability of the domain name system as well as their business operations.

Registrars actively participate in good faith in the GNSO and the ICANN community. The RrSG understands that registrars, thanks to their unique relationships with registrants, are sometimes the preferred channel for policy implementation. In that context, the RrSG offers the following communication regarding policy work undertaken prior to and during ICANN's 40th public meeting.

Issues

Registrar Accreditation Agreement

The Generic Names Support Organization (GNSO) Council considered a series of motions related to the Registrar Accreditation Agreement. (See <http://gns0.icann.org/meetings/agenda-council-16mar11-en.htm>) The motions were either deferred or defeated.

The RySG and RrSG did not support these motions, and in discussing their position with the GNSO Council, provided the following joint statement, presented by RySG Councilor Jeff Neuman:

The Registry and Registrar Stakeholder Groups [are voting] no on [this] motion. I will explain the rationale behind this vote, address the perception of contracted parties by the non-contracted parties, and offer a way forward on issues of concern.

The ICANN community established clear processes for developing policy and they need to be counted on. We rely on these for our own stability and to set expectations with our customers. This motion undermines those processes; re-wording it will not cure that problem.

With regard to the RAA, there is a picket fence that sets out what areas can be addressed by the Consensus Policy process; the rest may only be done through a contract amendment negotiated between the Contracted Parties and ICANN. None of this prevents communication between the Contracted Parties and the community regarding possible amendments. These expectations are not adjustable because they don't accommodate a particular agenda or timeline. In cases of pressing need, there are alternative ways to approach Contracted Parties with a request for assistance.

It is unfortunate that perceptions in the community about the role of contracts have become as distorted as they have. However, the GNSO Council is neither a contract administrator nor an interpretation authority. Were some points of view adopted on how and why contracts should be updated, in theory agreements could be amended at any time by the GNSO Council by a motion and vote. That is not an appropriate expectation.

Contracted parties agree the community, where appropriate, needs a voice in policy matters. In fact, the community has a voice and with regard to the RAA has exercised it enthusiastically. The friction, we believe, that exists today comes from misperceptions of the role of the GNSO Council and from expectations of how the community's interests will be considered through negotiations.

The argument that "impacted" parties deserve a place in negotiations is unpersuasive. All of us in this room are impacted by agreements of all kinds every day as we conduct our businesses and live our lives. Were that logic carried forward, each of us would be full-time contract negotiators with airlines, telecommunication service providers, highway authorities, construction companies, appliance manufacturers, office landlords, and hundreds of others.

If the suggestion is that others deserve a place at the table because the last round of contract negotiations didn't produce satisfactory outcomes, the implication is that third party participation is the only avenue to satisfaction. This is a prescription for needless complication.

We are aware of the desire of the community to maintain momentum, and are willing to cooperate toward that goal so long as that is done in the proper manner.

First, the integrity of processes, and the ability for everyone in the community to rely on them, must remain sound.

Second, keep in mind that the full implementation burden—financially and operationally—of proposals are borne by Contracted Parties. Some proposed RAA amendments are not currently operationally or commercially feasible.

The fastest and most effective way to assist the community with its many agendas, is to engage *first* with the Contracted Parties, and propose policy *second*. Making proposals without an understanding of whether or not they're operationally or commercially feasible is irresponsible.

Contracted Parties have been able to reset expectations of some. In late February, we met with international law enforcement authorities in Brussels. Law enforcement had made 12 proposals for RAA amendment, but after discussions with registrars on each one, they understood which were practical, which were wholly impractical, which could be addressed by contract amendment, and which should be addressed through PDP or a voluntary cooperative model. That discussion would have been far more productive 18 months ago, vs. wording amendments without discussing with registrars, seeking and receiving endorsements, and then running into the "here's why that idea can't really be done" discussion.

The registrars are working with ICANN staff to identify a predictable manner to amend the RAA. Reaching clarity on that issue should be the highest priority.

Further, registrars will be examining the issues identified by the community in the RAA Working Group's final report and will evaluate those from an operational and commercial perspective. For those that are not operationally or commercially feasible to implement, registrars will offer its rationale.

Our request of the community is this: Open a dialogue with relevant Contracted Parties on the concerns you have. We have made outreach efforts to many in the community; while many are willing to have a dialogue with us, others regrettably, and puzzlingly, have refused. Regardless, our leadership has committed to 100% openness to the community. We will help the community understand what is feasible and collaborate on prioritization and an appropriate method to reach mutually desired outcomes.

Registrars look forward to working with ICANN staff to identify a predictable method for amending the RAA when necessary, and to consulting with the community regarding its input on potential contract amendments and/or policy development.

New gTLDs

Registrars actively participated in consultation with the Board of Directors and the Governmental Advisory Committee (GAC) as they reviewed the new gTLD program. Registrars contributed the following input as a statement that consolidates its input from several meetings:

At the request of ICANN's Chairman of the Board of Directors, the Registrar Stakeholder Group (RrSG) provided its assessment of the current status of the new gTLD program, and its recommendations to the Board and Governmental Advisory Committee (GAC) on bringing preparations for the program to conclusion.

As active participants in the ICANN policy development process, the RrSG believes the new gTLD program will bring choice, innovation and value to Internet consumers, and will positively contribute to economic growth.

The RrSG supports and wishes to underscore the importance of the bottom-up, multi-stakeholder policy-making process, and as contributors to the GNSO, asks the Board to carefully consider stakeholder group input if additional changes to the applicant guidebook are to be contemplated.

The RrSG is prepared to further assist the Board and GAC in completing its work in the most timely and efficient manner possible.

Program status

Encouraging continued good faith discussions

The RrSG applauds the Board's and GAC's redoubling of efforts to resolve outstanding issues related to new gTLDs, and thanks members of both bodies for devoting time and resources over the past few months. We encourage continuation of these efforts in good faith.

Correctly focus intended policy outcomes by considering operational input of registrars and registries

As discussions continue, the RrSG requests that the Board and GAC seek and consider input from registry operators and registrars as to the practicality of policy implementation. As the Board and GAC are aware, registrars and registries met in late February in Brussels with international law enforcement representatives, and made substantial progress on policy issues important to that community on the basis of understanding what is and isn't easily applicable to operational systems. Similarly, regular consultation with registrars and registries can also contribute greatly to the policy-making process for new gTLDs.

Minimally, approve a timeline

The RrSG asks that, should the applicant guidebook not be approved at the Silicon Valley-San Francisco meeting, at minimum the Board approve and publish a timeline for finalizing the guidebook, opening applications, and introducing new gTLDs.

Decisions will begin to restore balance to community and give necessary latitude for investments

Discussions of new gTLDs have increasingly burdened the community's time, finances and resources. Further, potential applicants have patiently devoted additional resources to their organizations while the community attempts to arrive at decisions. The RrSG anticipates and looks forward to decisions that will bring restoration of relative balance to community resources and more operational certainty for potential applicants, while satisfying the concerns of rights holders and others.

Specific input on outstanding points in the GAC Scorecard can be found on the RrSG public mailing list at: <http://gns0.icann.org/mailling-lists/archives/registrars/msg05876.html>

Confirmation of outcomes from consultations with law enforcement

The RrSG consulted with international law enforcement agencies (LEAs), beginning at the ICANN 38 meeting in Brussels, continuing in Washington DC in September 2010, and in Brussels in February 2011.

LEAs made 12 specific proposals of registrars to assist their law enforcement activity. During the Brussels consultation, registrars and LEAs reviewed those proposals and identified procedures that could be implemented in the near term and those that needed revision if they were to be considered possible operationally. See: <http://gnso.icann.org/mailing-lists/archives/registrars/msg05876.html>

The RrSG confirms those outcomes and commits to continue working with LEAs on these and other issues.

Thanks to meetings team and registrar liaison staff

The RrSG understands that due to the GAC-Board consultations, the Silicon Valley-San Francisco meeting is atypical and demanded flexibility in meeting times, on-site resources, and community schedules.

The RrSG is immensely grateful to ICANN's meeting team and the registrar liaison staff, who worked extremely hard to arrange for registrars' needs and accommodate the community. We encourage the rest of the community to similarly commend the staff for its hard work and professionalism.

Conclusion

The RrSG thanks the Board, the GAC, the GNSO and the rest of the community for a productive meeting, and looks forward to ongoing discussions at ICANN 41 in Singapore.