Introduction

This is an updated version of the Expert Materials that was distributed to the Taskforce on 25 September 2006.

New links to relevant material include:

- ICANN Board meeting agenda 18 October 2006 which lists discussion of the .biz, .info, .org and .asia agreements (http://www.icann.org/minutes/)
- Responses from ICANN Registries to a request for more information about proposed registry agreements (http://www.icann.org/announcements/announcement-1-12oct06.htm)
- ICANN Board Secretary’s notice to ICANN Registries asking for responses to public comments (http://www.icann.org/minutes/secretarys-notice-27sep06.htm)

Base Materials

This section sets out the base materials which have been used by the Taskforce.

- Terms of Reference found at http://gnso.icann.org/issues/gtld-policies/tor-pdp-28feb06.html.
- Issues Report -- http://gnso.icann.org/issues/gtld-policies/issues-report-02feb06.pdf Note in particular the Annex 3 Table from the Issues Report which sets out in brief form the treatment of each of the registry agreements and the Terms of Reference.
- Preliminary Taskforce Report found at http://gnso.icann.org/issues/gtld-policies/pcp-pdp-03aug06.pdf.
- Taskforce Guidelines found at http://www.icann.org/general/archive-bylaws/bylaws-08apr05.html#AnnexA which will guide the work of the group.
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<td>No</td>
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<td>Yes</td>
<td>Yes*</td>
<td>US$30.90*</td>
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<td>Yes</td>
<td>Yes*</td>
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<td>Yes</td>
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<td>Yes</td>
<td>No</td>
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<td>no provision</td>
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<td>Yes</td>
<td>No</td>
<td>US$10k + US$2.00*</td>
<td>no provision</td>
<td>No</td>
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</tbody>
</table>

Table from Annex 3 to PDP Feb 06 Issues Report (http://gnso.icann.org/issues/gtld-policies/issues-report-02feb06.pdf)
PDP Feb 06: Policies for Contractual Conditions

Term of Reference One: Registry Agreement Renewal

Date: 18 October 2006

REGISTRY AGREEMENT RENEWAL

Examine whether or not there should be a policy guiding renewal, and if so, what the elements of that policy should be.

1. This section sets out materials that relate to the renewal of licensing agreements in a variety of different industry sectors to provide some comparison to the way in which ICANN renews its agreements with registry operators.

2. The full list of ICANN’s existing GTLD registry agreements can be found at http://www.icann.org/registries/agreements.htm.

3. The three agreements which are being renewed in 2006, .biz, .info and .org, were the subject of a public comment period, the archive for which can be found at http://www.icann.org/announcements/announcement-2-28jul06.htm.

4. The ICANN Board is due to discuss these public comments and correspondence from the registries at its 18 October 2006 meeting (http://www.icann.org/minutes/)

5. The key policy elements that have emerged from a related policy development process to enable the introduction of new top level domains are:
   i. Predictability of process
   ii. Reasonable commercial terms and contract length
   iii. Public comment processes on commercial negotiations

6. There are several elements to renewing registry agreements that are similar to licensing arrangements in the broadcasting or telecommunications industry. The examples provided below are all consistent with pre-published procedures for service provider selection; simplified systems and pre-published contractual terms and
conditions.

7. The Asian Development Bank (found at http://www.adb.org/Documents/Guidelines/Procurement/default.asp?p=prcmnt) provides a detailed handbook that sets out, for example, the Terms of Reference, the Invitation for Proposals, Evaluation of Proposals and Contract Negotiation.


9. The OECD’s “Instructions to Tenderers” (found at http://www.oecd.org/site/0,2865,en_21571361_33635822_1_1_1_1_1,00.html) are very similar to those used by ICANN in the sTLD 2004 process and in the Request for Proposal for the GNSO Review. In all three examples, it is evident that a pre-published, predictable and transparent process would be consistent with best practice in other industries.

10. Turning now in particular to licensing renewals. The first four examples illustrate the way in which licensing is handled in four different jurisdictions. The second set of examples refers to expert materials that discuss licensing in different environments.

11. The UK’s Office of Communications (found at www.ofcom.co.uk) is an integrated communications services regulator that manages broadcasting, radio communications and telecommunications. Ofcom lists online all the possible licenses across the radio, broadcasting, TV and Internet industries. It sets out the terms and conditions of each of the licenses and the online system of applying for, varying or renewing a license.

12. The Australian Communications and Media Authority (found at www.acma.gov.au) follows a similar integrated licensing structure.

13. The New Zealand Commerce Commission (found at http://www.comcom.govt.nz) principally regulates competition in New Zealand. It also has regulatory responsibility for network industries such as electricity and telecommunications. It is interesting to examine the treatment of radio spectrum rights for cellular and broadcasting (found at http://www.med.govt.nz/templates/ContentTopicSummary_9326.aspx).

14. The Canadian Radio, Television and Telecommunications Commission (found at...
http://www.crtc.gc.ca/eng/welcome.htm) manages the licensing of all communications services in Canada. It streamlines the application process for licenses through a central processing point and provides opportunities for online applications (for both open and closed rounds of applications) to be submitted through the website. Like the regulators listed above, the CRTC also lists its decisions online and provides the opportunity for complaints to be handled electronically.

15. European Union member states and industries are supervised from a fair competition perspective by the European Commission (see http://ec.europa.eu/comm/dgs/competition/mission/) applying the EU Treaty Articles on competition. Article 81 (found at http://ec.europa.eu/comm/competition/legislation/treaties/ec/art81_en.html) and Article 82 (found at http://ec.europa.eu/comm/competition/legislation/treaties/ec/art82_en.html) are the cornerstones around which anti-competitive conduct in the European marketplace is treated.

16. Article 81 prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

17. Article 82 defines “abuse” as “(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

18. There is also a wide variety of sector specific regulation which covers pricing issues within each of the EU’s areas of interest including, for example, pharmaceuticals and agricultural products.
19. Taskforce members may find the US Federal Trade Commissioner’s plain English guide to anti-trust provisions in the US useful [http://www.ftc.gov/bc/compguide/index.htm](http://www.ftc.gov/bc/compguide/index.htm). The FTC explain their role as a “consumer protection agency with two mandates under the FTC Act: to guard the marketplace from unfair methods of competition, and to prevent unfair or deceptive acts or practices that harm consumers. These tasks often involve the analysis of complex business practices and economic issues. When the Commission succeeds in doing both its jobs, it protects consumer sovereignty -- the freedom to choose goods and services in an open marketplace at a price and quality that fit the consumer’s needs -- and fosters opportunity for businesses by ensuring a level playing field among competitors. In pursuing its work, the FTC can file cases in both federal court and a special administrative forum.”

20. Some other helpful sources of information about licensing and license terms and conditions include the ACCC’s *Model Terms and Conditions* for its interconnection agreements. In addition, the ACCC provides a statement on assessing price modifications for those agreements which, in practice, are negotiated by working groups of interested stakeholders not dissimilar to the model which ICANN uses to arrive at consensus policy decisions.

21. Singapore’s Infocomm Development Agency (IDA) provides publicly available information about a range of issues around competition, its interconnection pricing negotiations and the policy framework for price control. In addition, Singapore’s policy framework for price control is available on their website. IDA says that “in a fully competitive environment, market forces are more effective than regulations in providing consumers with a wide choice of services at reasonable prices. Hence, price regulation is imposed only on dominant operators that have the potential to

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2 [http://www.accc.gov.au/content/index.phtml/itemId/700599/fromItemId/557546](http://www.accc.gov.au/content/index.phtml/itemId/700599/fromItemId/557546).
abuse their market power and engage in anti-competitive practices. For instance, dominant operators must file the price of any telecommunication service they intend to offer with IDA and obtain IDA's prior approval before offering the service/price to end-users. While non-dominant operators need not file tariffs with IDA for prior approval, they must publish the prices, terms and conditions for their standard telecommunication services for end-users' information. Dominant operators are also subject to price control arrangements where operators are required to comply with benchmark prices set to ensure that key telecommunication services that have yet to experience full-fledged competition, but are vital to promoting the competitiveness of businesses in Singapore or have wide public impact, remain internationally competitive vis-a-vis other major financial centres, NIEs and neighbouring countries. While IDA sets the benchmarks, it does not set the commercial prices so long as the benchmarks are met.”

22. The next section focuses on materials that examine licensing guidelines. These references are not exhaustive but do touch upon issues raised by some Taskforce Members.

23. The World Bank report on mobile license renewal which says that “...a major challenge facing regulators...is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. This challenge applies across a wide range of regulatory instruments and vehicles including license renewal...”.

24. A comparative paper, again from Singapore, sets out its licensing guidelines and deals with renewal and pricing issues. The guidelines also provide, on line, a list of licensees in a similar way to that where ICANN lists registry providers.

25. Some Taskforce members provided suggestions about academic authors whose work may be helpful:


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See a full list of publications at http://www.wbs.ac.uk/faculty/members/martin/cave.

ii. Dr Andrew Odlyzko, University of Minnesota. See in particular Pricing and architecture of the Internet: Historical perspectives from telecommunications and transportation (A full list of his publications can be found at http://www.dtc.umn.edu/~odlyzko/doc/networks.html).


iv. Dr Michael Katz, Haas School of Business, University of California, Berkeley. See in particular Your network or mine? The economics of routing rules (found at http://faculty.haas.berkeley.edu/katz/Your%20Network%20or%20Mine%20posted.pdf)

v. Professor Rob Frieden, Penn State University. See in particular Managing Internet-driven change in international telecommunications (found at http://www.personal.psu.edu/faculty/r/m/rmf5/)
1. This section sets out materials that relate to the treatment of registry agreements and the applicability of consensus policy. Refer also to Table 3 from the Issues Report at the front of this document.

2. The table below shows two columns – the areas which are the subject of consensus policy development in registry agreements and the subject areas where these discussions are applicable.

3. The Deputy General Counsel has provided an additional information document which should be read separately. The link to the document is here -- http://forum.icann.org/lists/pdp-pcceg-feb06/msg00297.html. (It is a very large document and is best viewed on screen rather than in printed form).

<table>
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<tr>
<th>Consensus Policy Development Processes:</th>
<th>Issue Categories</th>
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<tbody>
<tr>
<td>Applicability To Registry Agreements</td>
<td></td>
</tr>
<tr>
<td>(1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS</td>
<td>(A) principles for allocation of registered names in the TLD (eg first come, first served, timely renewal, holding period after expiration)</td>
</tr>
<tr>
<td>(2) functional and performance specifications for the provision of Registry Services</td>
<td>(B) prohibitions on warehousing of or speculation in domain names by registries or registrars</td>
</tr>
<tr>
<td>(3) security and stability of the registry database for the TLD</td>
<td>(C) reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related</td>
</tr>
<tr>
<td>(4) registry policies reasonably necessary to implement Consensus Policies relating to</td>
<td>(D) maintenance of and access to accurate and up-to-date information concerning domain name</td>
</tr>
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</table>
register operations or registrars registrations

(5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names)

(E) procedures to avoid disruptions of domain name registration due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such suspension or termination

(F) resolution of disputes regarding whether particular parties may register or maintain registration of particular domain names

4. Further materials will be made available to the GNSO Council and to the Taskforce members in response to correspondence from the PDP Feb 06 Taskforce Chair (http://gnso.icann.org/correspondence/cubberley-to-tonkin-25aug06.pdf).

5. The General Counsel's response can be found at (http://gnso.icann.org/correspondence/jeffrey-to-tonkin-27sep06.pdf)
POLICY FOR PRICE CONTROLS FOR REGISTRY SERVICES

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)

1. Taskforce members should refer to Table 3 from the Issues Report at the beginning of this document which sets out where price controls are found in individual registry agreements.

2. The recently posted .BIZ, .INFO and .ORG contracts (http://www.icann.org/announcements/announcement-2-28jul06.ht) contain specific notice that price controls have been lifted for those agreements consistent with the .NET registry agreement and the proposed .COM agreement. The public consultation notice says “…following extensive consideration and discussion, each of the proposed new .BIZ, .INFO and .ORG registry agreements provide for the lifting of price controls formerly imposed on the pricing of registry services. However, in order to protect incumbent domain name registrants and allow time for planning by those in the registry and registrar communities, the form of registry-registrar agreement proposed with each of the new registry agreements requires six months advance notice by the registry operator of any price increase in registry services. This is consistent with the notice period required under the registry-registrar agreement implemented with the 2005 .NET registry agreement, and the registry-registrar agreement included with the proposed new .COM registry agreement.”

3. Specific provision has been made in the new agreements specifying the term of new agreements. “Term of New Agreements. The proposed .BIZ, .INFO and .ORG registry agreements provide for an initial six year term. Each of the proposed .BIZ
and .INFO agreements would expire, absent renewal, at the end of December 2012, and the proposed .ORG agreement would expire at the end of June 2013, absent renewal”.

4. In addition, an explanation has been provided about presumptive renewal which reads “...Presumptive Renewal. The proposed new .BIZ, .INFO and .ORG registry agreements each provide for presumptive renewal, absent material and repeated breach of the agreement by the registry operator. This is consistent with each of the 2005 .NET registry agreement, and the proposed new .COM registry agreement. With respect to the terms of any subsequent agreement negotiated with the registry operators for the continued operation of the .BIZ, .INFO and .ORG registries, the proposed agreements provide that adaption [sic] of renewal terms will be via comparison to the five “most reasonably comparable” gTLDs, as compared to the “five largest gTLDs” language of the 2005 .NET agreement and the proposed new .COM agreement.”

5. Price controls are a regular feature of many markets including those for toll roads and shipping, telecommunications services and the petroleum industry. In Australia, the Competition and Consumer Commission monitors pricing across a wide range of industries (http://www.accc.gov.au/content/index.phtml/itemId/3671) and provides advice about and compliance with pricing arrangements in the context of broader competition policy principles.

6. Hong Kong’s OFTA (http://www.ofta.gov.hk/en/report/r-gen/95i141d.html) has an interesting comparative report on price controls in the context of the regulation of telecommunications. The report shows that identifying the objective of a price control regime and keeping a short time frame for the review of any price caps are important considerations. The report compares Australia, the United Kingdom and the United States to draw conclusions about price controls in Hong Kong which features very low regulatory barriers and limited pricing controls across the economy.

7. The OECD, in addition to a wide array of statistical reports, provides information specifically about the telecommunications, broadcasting and Internet industries. These reports indicate a series of downward pricing trends for communications services. A number of recent reports are relevant to the work of the Taskforce.

   i. on pricing and policy trends in integrated communications services markets

ii. on general broadband statistics showing pricing and Internet access and penetration rates  
http://www.oecd.org/document/9/0,2340,en_2649_37441_37529673_1_1_1_37441,00.html and

iii. on broader ICT industry growth  
http://www.oecd.org/document/34/0,2340,en_2649_37441_37487522_1_1_1_37441,00.html

8. The following website has material on the introduction of price control of within the electricity line businesses in New Zealand in addition to the gas and dairy industries. The speeches section (http://www.comcom.govt.nz/MediaCentre/Speeches/SpeechesList.aspx) is helpful to identify the policy approach of the New Zealand Government which, in the last decade or more, has taken a liberal, market regulation approach to all aspects of business regulation.

9. A new OECD report on structural separation (http://www.oecd.org/dataoecd/19/50/37318693.pdf) may be of interest to the Taskforce which could identify parallels between the registry and registrar industries and the effect of competition separation between those two industry sub-sets. For more historic background, the Competition Committee’s 2004 report on access pricing in telecommunications is helpful.  

10. The International Telecommunications Union has detailed information on the use and applicability of price caps and price controls, in the context of telecommunications services. In particular, the ITU-T study groups have conducted wide ranging work which can be found http://www.itu.int/ITU-T/publications/recs.html. Study Group 3 manages the ITU's work on economic issues in the global telecommunications industry (http://www.itu.int/ITU-T/studygroups/com03/index.asp) and, in particular, is focusing on work about economic and policy factors for the efficient supply of telecommunications services.

11. The APEC Telecommunications Working Group has, over many years, conducted a wide range of work on liberalizing markets and free market systems. That work has been conducted in the context of broader consideration of the World Trade Organisation’s free trade agenda. The APEC TEL WG has resources on interconnection pricing; Internet peering and pricing and, for broader context, stocktakes of progress towards fully liberalized markets with the APEC region. Taskforce members may find some older and more detailed reports beneficial and the full set of reports can be found at http://www.apectelwg.org/).
PDP Feb 06: Policies for Contractual Conditions

Term of Reference Four: ICANN fees

Date: 18 October 2006

To be provided.
POLICY FOR USES OF REGISTRY DATA

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?

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.

1. The GNSO’s question about whether or not there should be a policy regarding the use of registry data for purposes other than that for which it was collected refers to areas that are outside the constraints of the GNSO’s policy making authority which is constrained by the “picket fence” of consensus policy making. The protection of privacy of individual data resides under a variety of privacy acts in national jurisdictions. Almost without exception, individual data can only be used for the purpose for which it was collected. Registries and registrars are obliged to follow the rules of the countries in which they operate.

2. The following links provide some useful information:

3. In Europe, the Data Protection Directive, (found at http://www.cdt.org/privacy/eudirective/EU_Directive_.html) is clear in its intent to protect the privacy of individuals.

4. In the US, the Privacy Act, can be found at


7. The charts below show the different kinds of information displayed by different registry operators. Work within the WHOIS Taskforce and members of that Taskforce who are also in this group will have detailed knowledge of data requirements for the purposes of WHOIS discussions.
co.uk

Domain name: google.co.uk
Registrant: Google Inc
Registrant type: Non-UK Corporation
Registrant's address:
2400 Bayshore Parkway
Mountain View 94043 CA
Registrant's agent:
eMarkmonitor Inc. t/a Markmonitor [Tag = MARKMONITOR]
URL: http://www.markmonitor.com

Relevant dates:
Registered on: 14-Feb-1999
Renewal date: 14-Feb-2007
Last updated: 18-Jan-2005

Registration status:
Registered until renewal date.

Name servers:
ns.google.com
ns2.google.com

goole.de

Domain: google.de
Domain-Ace: google.de
Descr: Google Inc.
Descr: 1600 Amphitheatre Parkway
Descr: 94043 Mountain View
Descr: US
Nserver: ns1.google.com
Nserver: ns2.google.com
Nserver: ns3.google.com
Nserver:     ns4.google.com
Status:     connect
Changed:     2005-08-04T00:02:49+02:00

[Admin-C]
Type:         PERSON
Name:         Lena Tangermann
Address:      Google
Address:      ABC-Strasse 19
Pcode:        20354
City:         Hamburg
Country:      DE
Changed:      2005-06-20T11:44:06+02:00

[Tech-C]
Type:         PERSON
Name:         Google Inc.
Address:      Google Inc.
Address:      1600 Amphitheatre Parkway
Pcode:        94043
City:         Mountain View
Country:      US
Phone:        +1-6503300100
Fax:          +1-6506188571
Email:        dns-admin@google.com
Changed:      2005-05-19T18:02:06+02:00

[Zone-C]
Type:         PERSON
Name:         Domain Billing
Organisation: MarkMonitor
Address:      PO Box 155 10400 Overland Road
Pcode:        83709
City:         Boise
Country:      US

This is a working document and has no official status.
google.com

The Data in MarkMonitor.com's WHOIS database is provided by MarkMonitor.com for information purposes, and to assist persons in obtaining information about or related to a domain name registration record. MarkMonitor.com does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or (2) enable high volume, automated, electronic processes that apply to MarkMonitor.com (or its systems). MarkMonitor.com reserves the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Registrant:
Google Inc. (DOM-258879)
Please contact contact-admin@google.com 1600 Amphitheatre Parkway
Mountain View CA 94043
US

Domain Name: google.com

Registrant Name: Markmonitor.com
Registrar Whois: whois.markmonitor.com
Registrar Homepage: http://www.markmonitor.com

Administrative Contact:
DNS Admin (NIC-14290820) Google Inc.
1600 Amphitheatre Parkway
Mountain View CA 94043
Information collected by a registry operator, which does not identify individuals, would be for their own use in managing network load and correctly provisioning their network and managing bulk customer data.
1. This Term of Reference is being examined by Rapporteur Group B. Referring to Table 3 at the beginning of this document, none of existing registry operators have mandates to invest in infrastructure.

2. One suggestion for expert materials has come from Network Solutions who have commissioned a report by Jeffery Archer. The report and associated press coverage can be found at http://about-networksolutions.com/DNS-A_System_in_Crisis.pdf and http://onlinepressroom.net/networksolutions/.