

Proposed NCUC/NCSG position on Registry-Registrar Cross Ownership and Joint Marketing

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A. Principles

NCUC supports what we consider to be the core principle underlying current policy. Current policy requires the functional and contractual separation of registries and registrars, and enables any ICANN-accredited registrar to sell domain name registrations in any ICANN gTLD on an equal access basis. While there may be reasons to deviate from that policy in the future, any major alteration requires a bottom-up Policy Development Process by the GNSO and ratification by the Board.

B. Terminology

We note that this issue is often labeled a debate over “vertical integration” of registries and registrars. That terminology is incorrect. What has been proposed by the Registrar constituency and debated in Seoul is not full vertical integration of registries and registrars but an opportunity for businesses that own both a TLD registry and a registrar to use the owned registrar to sell names in the TLD. That is not vertical integration, because the contractual and functional separation of registry and registrar remains, and all registries would still be open to all ICANN-accredited registrars. As noted above, any contracts that permit true vertical integration could not be enacted as a staff-defined “implementation” measure in the impending round of gTLD additions, but would require a PDP and a comprehensive review of ICANN’s economic regulations. The current debate is about registry-registrar cross-ownership and the ability of a cross-owned registrar to integrate marketing of names in the cross-owned TLD. We refer to this as “joint marketing.” We believe that contracts that permit joint marketing by new TLDs do not require a PDP and do not constitute a change in policy.

C. Policy for the impending round of new gTLDs

This statement addresses the issue of cross-ownership and separation in the near term; i.e., during the first round of TLD additions enabled by Draft Applicant Guidebook 4.

We believe that new TLD operators should be able to own a registrar that sells their own TLD, so that they can better market and promote the new TLD. Restrictions on joint marketing should be applied only to registrars with a high market share. (Below, we suggest a standard for defining “high market share.”)

Drafting new gTLD contracts that permit joint marketing and promotion by cross-owned registries and registrars does not, in our opinion, constitute a significant deviation from the established policy described above. It is, rather, a change in the enforcement mechanisms meant to implement the policy. Therefore contracts permitting this cross-ownership could be used in the first round of new TLD additions. We also note that some current contracts already permit this (.PRO), that the practice has been permitted in the past, and that back-end registry service providers currently lack any restriction in that regard.

Here are the reasons why we have taken this position.

1. New TLDs lack market power and must compete intensely for new registrations. New TLDs will face severe barriers to public recognition and acceptance, especially smaller ones targeted at specialized communities. They cannot easily attract customers who have already registered in existing domains because of the high switching costs consumers face. They will have to compete with ASCII and IDN ccTLDs, many of whom may be vertically integrated with registrars. Major registrars may or may not be interested in giving these new TLDs the visibility and "shelf space" they need. The success of many new TLDs, therefore, may hinge on allowing them to own their own registrar and jointly market their new domain.

2. Allowing a new registry to own and operate a registrar also encourages robust competition in the market for back-end registry services. We believe that such intensified competition will dramatically decrease the wholesale cost of registry services and lead to benefits for consumers. Currently, such competition is distorted and limited, because when a new TLD owner chooses a back end service provider who owns a registrar, that registrar cannot be used to promote or even to sell the new TLD. Because major registrars are the most likely source of competition to existing registry operators, that limitation handicaps some of the strongest potential players in the back end services market. It makes it more likely that an incumbent registry operator will be selected, so this limitation makes it more difficult for effective competition to emerge in the market for back end services.

3. Opponents of the cross ownership proposal have argued that co-mingling of registry and registrar data will allow the combined entity to "taste" demand for valuable names in their name space and use this information to price discriminate. This is alleged to harm the public interest because ordinary registrants will have to pay more than the standard wholesale rate for names that prove to be valuable. However, this argument falls apart when one considers two facts: 1) new TLD registries will not be price-capped, and 2) new TLD registries can taste demand for second-level names and price-discriminate among them without jointly operating a registrar. Together, these two facts mean that new gTLD registries can charge higher prices for premium names with or without owning a registrar that sells its own names. Indeed, this kind of price discrimination has become routine among even the registries who are opposing the approach we advocate. The .mobi registry, for example, reserved a whole class of premium names and held an auction for them a couple of years ago. Some of the names in this auction fetched prices in the tens of thousands or hundreds of thousands of dollars.

The simple economic fact driving this situation is that second-level domain names are extremely cheap to produce, yet the value of premium names under a TLD are many multiples above that cost. In a restricted marketplace such as we have now, the gap between value and cost is huge. We believe that adding many new TLDs will reduce that gap, although it will never be eliminated. Thus, in our discussion of the impact of integrated ownership and marketing we should not compare the flat, undifferentiated

wholesale price of an ordinary domain with the differentiated price of a premium name; we should instead compare the price of premium names now with the expected price of premium names when many new TLDs enter the market. We believe that new competition will result in an overall decline in the price of premium names, thereby making catchy, easy to use names more accessible to general members of the public. As evidence for this conclusion, we note that many domainers or people who make money in the secondary market for domain names have strongly opposed the introduction of new TLDs.

4. Our investigation of registry-registrar relationships indicate that attempts to maintain artificial boundaries between the ownership and joint operation of the two functions will not work. The lines are eroding and attempts to impose complex ownership and marketing restrictions only reduces overall efficiency without producing much benefit to the public.

D. Restrictions on registrars with high market share

We recognize the possibility that a registrar with a dominant share of the registry market could serve as a competitive bottleneck. A registrar that controlled, for example, 60% of the market for gTLD registrations and then bought or acquired one or more new TLDs would be able to promote its own TLD(s) at the expense of other TLDs, and use its dominance of the registrar market to foreclose consumer access to many other new TLDs. Therefore we propose that ICANN adopt a threshold of gTLD market share (suggested value = 45%) and not allow joint marketing by any registrar whose market share exceeds that threshold.¹

¹ The choice of 45% is not completely arbitrary; it is based on an HHI calculation which suggests that a competitive market produces an HHI of no more than .2000 and that if any one firm has 45% or more market share the HHI for the market as a whole would exceed .2000.