

Process for Amending the Registry Agreement

Challenges: In an environment with an increasing number of gTLDs, what options are available to amend the Registry Agreement given three concerns described in public discussion:

- The pragmatic aspects of administering and servicing an environment including hundreds or more of gTLD registries.
- The public interest need to protect registrants and users by being able to amend the agreement in a timely manner.
- Furnishing predictability and certainty to registry operators so they can plan and run their business operations.

Pragmatics: In an environment anticipated to include hundreds of gTLD registries, it is difficult to negotiate amendments on individual bases without creating expensive and large legal, contractual compliance and liaison organizations. The compliance environment, in particular, will become unsustainably complex with multiple forms of agreement and requirements. It can be inferred from the GNSO policy recommendations that a single (or very few) form of agreement was anticipated – and to be published prior to receipt of applications. Therefore, some uniform manner of amending new gTLD agreements should be adopted.

Public interest: In an environment anticipated to include hundreds of gTLD registries, it is anticipated that new business models will develop that do not violate the terms of the registry agreement but work to the disservice of registrants, users, or the level-playing field. The oft-quoted RAA example provides a case-in-point – where evolving business models often outpace the ability to address by amendment the deleterious effects of the new practices. RAA amendments, when vigorously prosecuted, take up to two years to enact and another several years to make effective. In order to protect registrants and to adapt to changing market conditions amendments should be made effective in a timely manner. Further, what options provide for flexibility, timeliness and some level of certainty in the amendment process?

Business certainty: Any process for amending the agreement must address the financial and operational challenges for registry operators. The new gTLD program was established to create competition and choice for users. In order for innovative models to flourish, registry operators must be able to plan and operate with some certainty about the potential and timing of change. The process must have appropriate notice and safeguards for registry operators. Examples of agreements where unilateral changes can be made but there are safeguards in place include the RRA (where ICANN approval is required) and credit institutions (where there is oversight). Other safeguards include limiting an amendment process to those areas of the agreement necessary and a veto procedure by registries. Safeguards instituted for amending the new gTLD registry agreement should work to ensure that amendments narrowly address the issue raised without detrimentally affecting existing or planned business models.