Report of Public Comments

Proposed Renewal of .CAT Sponsored TLD Registry Agreement

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Section I: General Overview and Next Steps

General Overview

ICANN has posted for public comment the proposed agreement for renewal of the 2005 Registry Agreement for .CAT, which is set to expire on 19 December 2015. This proposal is a result of discussions between ICANN and Fundació puntCAT, based on the approved new gTLD Registry Agreement as updated on 9 January 2014 with specific provisions contained in the 23 September 2005 Sponsored TLD Registry Agreement which have been carried over to this renewal agreement to account for the specific nature of the .CAT TLD, a Sponsored TLD.

Next Steps

~~After taking into consideration~~ In the public comments received (see summary and analysis below), some revisions to the proposed renewal of .CAT Registry Agreement are proposed.

The proposed renewal of .CAT Registry Agreement includes substantial and material changes to the original .CAT Registry Agreement, which are based on the existing New gTLD Registry Agreement terms (as described above). Similarly, .JOBS Registry Agreement, another Sponsored TLD, was renewed on 20 February 2015 (see: https://www.icann.org/resources/agreement/jobs-2015-02-20-en).

As a next step, ICANN intends to consider the renewal proposal taking into account the comments.

Section II: Contributors

At the time this report was prepared, fifteen (15) community submission had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
IP Justice	Robin Gross	IPJ
Non-Commercial Stakeholders Group	Rafik Dammak	NCSG
Electronic Frontier Foundation	Jeremy Malcolm	EFF
Business Constituency	Steve DelBianco	BC
Internet Commerce Association	Philip S. Corwin	ICA
Intellectual Property Constituency	Gregory S. Shatan	IPC
Donuts	Mason Cole	DO

Individuals:

Name	Submitted by	Initials
Leap of Faith	George Kirikos	GK
Telepathy, Inc.	Nat Cohen	NC
NA	Mike Anderson	MA
Digimedia	Jay Chapman	JC
PPX International, Inc.	Gregg McNair	GM
NA	Psymon Izzy	PI
Domain Mondo	John Poole	JP
NA	Nuno	NN

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

A total of 15 comments were submitted and are considered in the summary and analysis below:

Comments opposed to the inclusion of the URS to the proposed renewal of .CAT Registry Agreement:

12 of the commentators objected to the inclusion of URS in the Specification 7 of the proposed .CAT Registry Agreement. (GK, IPJ, NC, NCSG, MA, EFF, JC, GM, ICA, PI, JP, NN)

Several comments stated that "All the new gTLD RPMs were implementation details of the new gTLD program and are not ICANN consensus policies applicable to all registries and registrars. The

URS can become a consensus policy only after a full policy development process (PDP) engaged in by the entire ICANN community of stakeholders. (GK, NC, NCSG, MA, EFF, JC, GM, JP) While some of the comments indicated that "the GNSO has yet to receive the new gTLD RPM Issues Report that may be the basis of one or more PDPs; including one addressing whether they should become Consensus Policies applicable to all gTLDs". (GK, NC, MA, BC, ICA, JC, GM, JP)

For the renewal of .cat registry agreement, EFF reiterated their comments they posted for .travel: "If the URS is to be extended to legacy domains such as .travel, this would place many further domains at risk of rapid suspension, which raises significant free speech concerns. It would also set a bad precedent for the extension of the URS to other legacy domains such as .com, .net and .org as their registries' contracts come up for renewal." (EFF)

For the renewal of .cat registry agreement, ICA also reiterated their comments they posted for .travel: "The potential addition of these RPMs to legacy gTLDs through this inappropriate avenue will have a substantial and deleterious effect on ICANN's policy making process going forward, will create a new and dangerous precedent whereby de facto Consensus Policy can be created by contractual fiat in violation of ICANN Bylaws, and will substantially and adversely affect third parties around the world consisting of the existing registrants of more than one hundred million legacy gTLD domains.", adding that "the RPMs could be imposed on legacy gTLDs only after their impact and efficacy was fully assessed, and then only via a standard PDP to create new Consensus Policy in conformity with ICANN Bylaws. " (ICA)

Comments relating to ICANN's method of renewing legacy TLD Registry Agreements:

11 of the commentators objected to ICANN's method of renewing legacy TLD Registry Agreements. (GK, IPJ, NC, NCSG, MA, JC, GM, BC, ICA, PI, JP, NN)

Several comments expressed that "Imposing URS on an incumbent gTLD via the contracting process is an unacceptable staff intervention into the policymaking process. Approval of this draft contract would constitute top-down, staff-driven policymaking in direct violation of ICANN's stated commitment to the bottom-up, private sector led policy development process." (GK, NC, NCSG, MA, JC, GM, JP)

While BC stated that their concern is not in regards to the adoption of new gTLD RPMs for legacy TLDs, BC, ICA and NCSG expressed their objection to the decision by ICANN staff to take the new gTLD registry agreement as the starting point for renewal RAs for legacy gTLDs since it has the effect of transforming the PDDRP and the URS into de facto Consensus Policies without following the procedures laid out in ICANN's Bylaws for their creation.

Both BC and NCSG also stated that they understand ICANN's desire to keep consistency within registry agreements, however they both emphasized that gTLD policy development should not take place outside of the GNSO.

"The attempt to impose new gTLD RPMs on legacy gTLDs by contract must be withdrawn in recognition that such action is in violation of ICANN Bylaws. If staff is unwilling to retreat on this initiative then ICANN's Board must assume responsibility and review all the issues at play, including

compliance with the Bylaws, before any legacy gTLD RA with such a provision is made final." (ICA)

ICA further indicated in their comment that during ICANN53 in Buenos Aires, "GDD staff also said they would change their position if the GNSO told them not to seek to impose new gTLD RPMs on legacy gTLDs - which is not only an impossibility for this proposed renewal RA, given the time required for the GNSO to establish policy via the standard PDP, but completely misunderstands and reverses the proper relationship between the stakeholders and staff. It is stakeholders who create ICANN policies through a bottom up process, which are subsequently administered by staff - not staff given free rein to initiate policy in a top down and unaccountable manner via contract negotiations until the stakeholders stop them". (ICA)

Both PI and NN indicated in their comments that they support the comments added by ICA.

One of the comments opposes "this illegitimate attempt by ICANN staff to further circumvent proper policy development processes in the creation and imposition of new gTLD policy. In addition to the inappropriate process utilized, the policy itself will chill freedom of expression as domain names will be quickly suspended without any fair opportunity for consumers to defend their lawful rights to use their domain names." (IPJ)

JP also emphasized that inclusion of the URS to the renewal of a legacy TLD registry agreement affects domain name registrants the most. "It is hardly "voluntary" when ICANN staff prepares and present a Registry Agreement with the URS included, to a renewing legacy gTLD registry operator. The "affected parties" are primarily domain name registrants, and ICANN staff has no clue about domain name registrants since there is no domain name registrants' stakeholder group within ICANN".

Comment in favor of inclusion of the URS to the proposed renewal of .CAT Registry Agreement:

Both IPC and DO, in their comments posted for .travel, .pro and .cat registry agreement renewals, expressed their disagreement with the claims stated in other comments.

On the claims about requirement for a PDP to implement RPMs, IPC expressed their support for Registry Operator's "voluntarily going above and beyond the minimum rights protections", adding that "Whether adding new restrictions against abusive registrations, implementing blocking or creating new dispute procedures, those best practices should be encouraged and do not require a PDP for TLD Operators to implement". IPC also clarified that "the URS was adopted pursuant to a multistakeholder process and was the result of discussion, compromise and consensus." (IPC)

On the other hand, in their comment ICA expressed their disagreement with IPC on their above comments: "We strongly disagree that there is anything voluntary about a process in which a supplicant registry in need of having its contract renewed must negotiate with ICANN staff who propose that inclusion of specific RPMs be the starting point for negotiations."..."Legacy gTLD registry operators are not free to create and adopt new RPMs that alter the rights of existing registrants at the time of contract renewal because there is no one in the negotiating room to speak for the due process rights of their registrants. Indeed, such negotiations take place behind closed doors and are not transparent to affected stakeholders." (ICA)

On the comments opposed to URS adoption by .CAT, IPC expressed their disagreement with the claims that URS "has largely displaced the existing UDRP system for the new gTLDs ", adding that "a review of proceedings since the launch of the new gTLDs shows significant use of both the URS and the UDRP." (IPC)

On the inclusion of the URS in the renewal of legacy TLDs Registry Agreement "Donuts disagrees with the premise that doing so as a matter of contract renewal violates the tenets of the multistakeholder model", explaining that the agreement is between the Registry Operator and ICANN and that to adopt such provision, no PDP is required and also "the implementation of the URS was agreed to in a consensus-based, multistakeholder fashion through the unanimous approval of the ICANN Special Trademark Issues Review Team (see http://gnso.icann.org/en/issues/sti/sti-wt-recommendations-11dec09-en.pdf). While the STI process didn't cover legacy TLDs, there certainly was no view of the STI that the URS should not be included in legacy TLDs. It was never considered." (DO)

Comment relating to "Exhibit A" of the proposed renewal of .CAT Registry Agreement:

IPC stated that some of the language in the current .CAT registry agreement has been omitted in the proposed registry agreement and that section 5 of the Exhibit A of the proposed registry agreement needs to be reviewed:

"The current agreement provides that "Subject to any future policy regarding Whois data adopted by ICANN, domain name registrants will be required to provide correct contact information…." We were unable to locate a similar requirement in the proposed new agreement."

"Under point 5 of the cited Part VI of Appendix S, "the Registry will offer access to the full data of individuals that have chose [sic] non disclosure to law enforcement agencies." No similar reference to law enforcement access appears in the proposed new agreement to our knowledge."

"We note there have also been a number of wording changes in the transition of Whois obligations from Appendix S to Exhibit A, many of which reflect the changed terminology now being applied to registration data services. We do not think these changes are intended to reflect any change in the .cat registry's current obligations to make this data publicly available; however this should be confirmed. In this regard, some of the phrasing of the proposed agreement provisions in section 5 of Exhibit A could be misleading and deserves further review. For example, the text refers to information about the name of a company or business that makes a .cat registration as "private contact information," a phrase that is not used in the existing agreement and which is typically used to describe information that will be protected from disclosure by the party to whom it is disclosed. This could easily lead some to think that it will not be publicly accessible via Whois or any successor system. Since this impression would obviously be mistaken, ICANN should consider whether some alternative phrasing would be clearer (for example, the existing agreement uses the phrase "applicable personal data" to cover this)." (IPC)

Comments relating to suggestions for the next steps:

Three of the commentators stated that ".CAT renewal RA should be referred for Board consideration only after Specification 7/URS has been removed from the agreement, along with all other provisions derived from the new gTLD RA that are not established consensus policies applicable to incumbent gTLDs." (NCSG, JC, JP)

One of the comments suggested that "if the decision is made by staff to retain these RPMs in the legacy TLD RA renewals following the close of the public comment period, we believe that the proposed final contract must be forwarded to, reviewed by, and voted upon by the ICANN Board." (ICA)

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

At the time of this report was drafted, a total of fifteen comments was added to the public comment announcement for the renewal of .CAT Registry Agreement. In the comments received, three key concerns were raised:

- Legacy TLDs' adopting new gTLD Registry Agreement
- Legacy TLDs' adopting URS through Registry Agreement renewal based on the new gTLD Registry Agreement
- Language in section 5 of Exhibit A of the proposed Registry Agreement

On legacy TLDs' adopting the new gTLD Registry Agreement by way of Registry Agreement renewal, concerns were expressed on ICANN's process to take the new gTLD registry agreement as the starting point for renewal RAs for legacy gTLDs since it has the effect of transforming the PDDRP and the URS into de facto Consensus Policies without following the procedures laid out in ICANN's Bylaws for their creation. On the other hand, few of the comments supported ICANN's seeking consistency within registry agreements.

On legacy TLDs' adopting URS through Registry Agreement renewal based on the new gTLD Registry Agreement, most of the comments received expressed their objection to the inclusion of the URS to the proposed renewal of .CAT Registry Agreement, claiming that the URS can become a consensus policy only after a full policy development process (PDP) engaged in by the entire ICANN community of stakeholders and that imposing URS on an incumbent gTLD via the contracting process is an unacceptable staff intervention into the policymaking process. On the other hand, two of the comments expressed their support of inclusion of the URS to the proposed renewal of the .CAT Registry Agreement, stating that the URS was adopted pursuant to a multistakeholder process and was the result of discussion, compromise and unanimity.

One of the comments stated that some provisions currently available in the existing .cat registry agreement are missing in the proposed registry agreement and that the language in section 5 of the Exhibit A of the proposed registry agreement needs to be reviewed.

It should be noted that the URS was recommended by the Implementation Recommendation Team (IRT) as a mandatory RPM for all new gTLDs. In the IRT Final Report, it is stated that "Therefore, the IRT recommends that ICANN implement the URS, which would be mandatory for all new generic Top Level Domain (gTLDs), implemented through the new gTLD registry agreements, which would in turn bind registrars supplying new gTLDs to the marketplace."

The GNSO was asked to provide its view on whether certain proposed rights protection mechanisms (which included the URS) were consistent with the GNSO's proposed policy on the introduction of new gTLDs and were the appropriate and effective option for achieving the GNSO's stated principles and objectives. The STI considered this matter and concluded, "Use of the URS should be a required RPM for all New gTLDs." (http://gnso.icann.org/en/issues/sti/sti-wt-recommendations-11dec09-en.pdf) That is, the GNSO indicated that the URS was not inconsistent with any of its existing policy recommendations.

Although the URS was developed and refined through the process described here, including public review and discussion in the GNSO, it has not been adopted as a consensus policy and ICANN staff has no ability to make it mandatory for any TLDs other than those subject to the new gTLD registry agreement. Accordingly, ICANN staff has not moved to make the URS mandatory for any legacy TLDs, and it would be inappropriate for staff to do so. In the case of .CAT and other legacy TLD registry agreement renewals (.JOBS) and proposed renewals for .TRAVEL and .PRO registry agreements, inclusion of the URS was developed as part of the proposal in bilateral negotiations between the registry operator and ICANN. It should also be noted that there are no restrictions on Registry Operators to impose further rights protection mechanisms, such as the URS, which could also be included in the Registry Agreement in other ways, such as through the RSEP process. However, since the Registry Operator expressed their interest to renew the .CAT Registry Agreement, which is set to expire on 19 December 2015, based on the new gTLD Registry Agreement, the proposed renewal language is similar to the new gTLD Registry Agreement except for the provisions stated above and also explained in detail in the public comment announcement.

Since the changes included in the proposed renewal of the registry agreement were material, ICANN posted the proposed renewal registry agreement for public comment. Finally, It is noted no comments against the substance of the renewal agreement were submitted.

As for the next steps, some of the comments proposed that renewal of .CAT Registry Agreement should be referred to ICANN Board after URS in Specification 7 is removed, while 1 of them proposed taking it to ICANN Board to review and vote if the RPMs section will remain in place.

As mentioned in the Public Comment announcement, as part of the renewal process, ICANN conducted a review of performance under the .CAT Registry Agreement. Fundació puntCAT was found to be in substantial compliance with their contractual requirements.

The renewal process will therefore follow its course as described in "Next Steps" in Section I above.