

REGISTRIES CONSTITUENCY  
GENERIC NAMES SUPPORT ORGANIZATION

21 October 2008

Mr. Peter Dengate-Thrush  
Chairman, Board of Directors  
ICANN  
4676 Admiralty Way  
Suite 330  
Marina Del Rey, CA 90292  
USA

Dear Peter:

The Registries Constituency of the Generic Names Support Organization respectfully submits this letter to bring to the ICANN Board's attention certain concerns that the Constituency has in connection with the current Registry Services Evaluation Process and how these concerns may impact ICANN's plans for adding new gTLDs.

The Registry Services Evaluation Process (RSEP) was developed through ICANN's consensus Policy Development Process (PDP). This PDP, entitled "*Procedure for use by ICANN in considering requests for consent and related contractual amendments to allow changes in the architecture or operation of a gTLD registry*", was approved by a super majority vote of the GNSO Council and was unanimously approved by the ICANN Board of Directors on 8 November 2005<sup>1</sup>. The fundamental premise, upon which this PDP was based, as properly noted in ICANN's advisory of 25 July 2006, was the need to "*support a timely, efficient and open process for the evaluation of new registry services.*"

Through this PDP, which has been incorporated either directly or by reference into all gTLD registry contracts, ICANN has committed to reviewing any submitted requests in a "*predictable and transparent manner*" in accordance with the recommendations in the Registry Services Evaluation Policy<sup>2</sup>. Additionally, Step 5 of that Policy notes that "*if no competition or security and stability concerns have been identified by ICANN, the requesting registry operator or registry sponsoring organization may deploy requested service and inform ICANN of its implementation plans.*"

While there has generally been a positive experience amongst the Registries Constituency members in connection with the RSEP, there is a growing concern within the Constituency that the timeliness, openness, transparency and predictability of the RSEP may potentially be compromised. The Constituency has the following concerns about "funnel requests" submitted pursuant to the RSEP:

- 1. The Registries Constituency appreciates the ability to circulate draft funnel requests to ICANN staff prior to formal submission, but once a Registry has submitted a formal funnel request, the Constituency firmly believes that ICANN has a duty under the RSEP to post that

---

<sup>1</sup> <http://www.icann.org/en/minutes/minutes-08nov05.htm>

<sup>2</sup> [http://www.icann.org/en/registries/rsep/implementation\\_notes.html](http://www.icann.org/en/registries/rsep/implementation_notes.html)


funnel request publicly and in a timely manner. The Constituency appreciates that there may be deficiencies in some requests that may prevent ICANN staff from conducting its analysis and thus formally starting the time clock. In such instances, ICANN staff should communicate this in an open and transparent manner while at the same time respecting any confidential aspects of the funnel request.

- 
- 2. The RSEP has traditionally been an explicit provision in the Registry Agreements, showing clear evidence of the importance of this process to Registries. However, in the most recent TLD Agreements, ICANN has attempted to incorporate this process by mere reference through the inclusion of a URL in the Registry Agreements. Unlike the existing Registry Agreements, each of which is a bilateral agreement between ICANN and the Registry Operator/Sponsor and generally requires mutual agreement prior to changing specific provisions, it appears that ICANN might attempt to make unilateral changes to the RSEP process by changing the provisions of the site at the URL. Therefore, if this trend continues, there need to be adequate safeguards to ensure that any changes to the RSEP process are properly disclosed, vetted and specifically agreed to by the parties.
- 3. The ICANN Board needs to acknowledge that it also has certain obligations under the Registry Agreements when it comes to taking timely action in connection with funnel requests, including any associated contractual amendments. There have been a number of recent incidents where the ICANN Board has not been able to address pending contractual changes in a timely manner. This raises concerns within the Constituency about the ICANN Board's ability to scale future funnel requests, when the number of gTLDs has grown substantially, as is expected, over the next few years.

In light of these concerns, the Registries Constituency urges ICANN to address these issues proactively to restore confidence within the Constituency that the original letter and spirit of the GNSO PDP are being preserved. To that end, the Constituency would be happy to work with ICANN staff and the GNSO Council to reaffirm these principles.

Yours Sincerely,

GNSO Registries Constituency

By   
David W. Maher, Chair

- Cc: Dr. Paul Twomey  
Doug Brent  
Kurt Pritz  
John Jeffrey, Esq.  
Craig Schwartz  
Patrick Jones  
GNSO Council