
HELSINKI – Discussion of the Proposed Amendments to the Base New gTLD Registry Agreement
Tuesday, June 28, 2016 – 10:30 to 11:45 EEST
ICANN56 | Helsinki, Finland

DENNIS CHANG:

So we're going to get started about five minutes. Feel free to come up and sit at the table, please. There's plenty of room at the table. Please come up and sit at the table and if you like to speak later and ask questions, please speak into the microphone for the recording.

We'll be getting started in about two minutes. Please feel free to come up and seat at the table. Everybody is welcome.

It's 10:30 now, so we'll be getting started. Everybody, please have a seat.

The recording had started. So let's get this meeting started.

This is the Amending the New gTLD Registry Agreement session at ICANN 56 in Helsinki. Welcome, everyone.

My name is Dennis Chang, GDD Services and Engagement Program Director, and I will be moderating this session today.

So please, for those people who are online and for the recording, when you speak, state your name and then talk into the

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

microphone. For those of you who are in the back, there's a couple of roving microphones on both sides that you can use.

Let me start by introducing the panels that we have. So I would like the panel members to introduce themselves starting at the top with Jon. Go ahead.

JON NEVETT: Jon Nevett from Donuts, and I chaired the Working Group.

SUSAN PAYNE: Hi, Susan Payne from Valideus. I was a member of the Working Group on behalf of the Brand Registry Group.

RUBENS KUHL: Rubens Kuhl, NIC.br, Registries Stakeholder Group.

CYRUS NAMAZI: Cyrus Namazi, ICANN Global Domains Division.

KRISTA PAPAC: Hi, everybody. Krista Papac with the Global Domains Division as well.

FRANCISCO ARIAS: Francisco Arias, [also] ICANN staff.

DENNIS CHANG:

Thank you. We will review the agenda.

So first, we'll provide some background of this amendment process and present to you the proposed changes to the new gTLD agreement, and public comment period we'll discuss, a few milestones that's important, and provide some helpful links for you to follow-up later.

And then, we're going to open it up for a question and answer session with the panel. So what I would like to ask you is to hold your questions until the question and answer session because for the first few minutes here, I'll be going through some general information for everyone.

So how did this amendment process begin? The Section 7.7 of the Registry Agreement provides the mechanism where ICANN or the Working Group appointed by the Registry Services Stakeholder Group to periodically process or propose the amendments to the agreement.

In July 2014, this process was initiated with RySG and then since then, the Working Group of the RySG and ICANN had been discussing a set of revisions to the Registry Agreement. And those discussions or bilateral negotiations after 18 months have

resulted in a set of proposed changes, which is presented to you today.

What are the changes? Some of the changes are clarifying responsibilities and updating to the term more of the administrative type of changes.

The proposed revisions were largely focused on technical corrections and clarifications. And the ICANN published a summary of these changes on our website, and I'm sure you have all seen that.

The final revisions will be implemented using the global agreement rather than restating the existing registry, and this is an important point we'll discuss further later. The newly contracted gTLDs will be signing the fully amended Registry Agreement is the plan.

Specifically, section by section, we will talk about what the changes are. On the monthly reporting, we provide a change where registry operator with the flexibility to defer the first month's report if the delegation has occurred during the second half of the month. You also clarify that registry operator will include domain names created during the pre-delegation testing in the monthly report if the names have not been deleted at the time of the delegation.

Section 2.9 for registrars, we propose a revision to clarify that under the formal Registry Agreement that ICANN does not approve pricing changes. Can you all see that? Okay.

Section 5.2, Arbitration wise, we are specifying the manner in which the arbitrator will be selected for arbitration proceedings.

Section 6.7, Fee Reduction Waiver, we're proposing that ICANN may determine to reduce the fee payable by the registry operator under the Registry Agreement. Under this provision, ICANN will retain discretion to determine whether a reduction in fees is appropriate, including the terms of any such reduction.

In 7.5 (f), Change of Control in Assignment and Subcontracting section, we proposed a revision creating a new defined term "affiliated assignee," which has the effect of facilitating reorganization by registry operator without triggering a [consent] right of ICANN. Additionally, the revision also clarifies that the affiliated assignee's assumptions of the obligation under the Registry Agreement must be made in writing.

The Exhibit A of Approved Services proposed revisions are as follows: Item 1.1.1 to 1.1.5 to reflect the ICANN's current practice of describing DNS services in existing Exhibit A in Item 1.1.6, 1.1.7, and 1.2, we add clarification to the DNS classes permissible and added permission to use TXT and Type 65-534 records in certain circumstances.

Spec 3, we proposed a revision clarified [fields] in transaction and activity report.

Spec 4.2.1.5, Use of Data by User section, we're proposing a revision that reflects harmonization of provisions with the CZDS terms of service.

Specification 6.1.4 concerning IDN we proposed revision intending to capture a circumstances where the provision of the Exhibit A may conflict with IDN guidelines in the future and provide priority to the ICANN IDN guidelines.

Spec 7 Section 1, Rights Protection Mechanisms, we're proposing a revision clarifying that registry operator must enter into a Registry-Registrar Agreement with at least one ICANN accredited registrar and specify the timing related thereto.

Spec 13, we're proposing a revision in response to the request by .brand TLD operators and provides that global amendments, example amendment approved pursuant to Section 7.6 or 7.7 of the Registry Agreement, that we cannot amend the provision of Specification 13 unless such amendments are approved by .brand TLD registry operators.

Those were the summary of revisions, and we'll look at public comment period.

So 31st of May, ICANN notified all registry operator that the public comment period for the proposed amendment was open. And Section 7.7 of the Registry Agreement states that the proposed amendment will be published for a minimum of 30 days. However, ICANN has extended that period to 43 days.

Once the public comment period ends, ICANN and RySG Working Group will consider the comments submitted and then submit a final proposal to all registry operators and the ICANN Board for a vote. Now, please note that the comments received, which do not pertain to the proposed amendment will not be considered.

If the amendment receives ICANN Board approval and the registry operator approval, it will become effective 60 days after ICANN sends legal notice to the registry operator. All members of the ICANN community are invited and encouraged to provide feedback. Public comment period ends 13 July 2016, so please go ahead and submit your comment to our public comment.

Let's look at the milestones.

So the public comment period opened on 31 May, right? It ends on the 13 July, and we will be providing a report on 12 August. Following that, we will request registry operator for a vote/approval and approval request to the ICANN Board. Once that's approved, then amendment will become effective upon 30 days' notice from ICANN.

Here is a list of helpful links, and these slides will be posted online as with all of our other ICANN presentation.

Let's get to your questions and answers so we're ready. Anybody? Go ahead, please.

REG LEVY:

Reg Levy, Minds + Machines. Is a fax number still a requirement under this, just in general? There are a number of instances where I've been required to provide a fax number. Given the realities of current technology, that fax number just goes to an e-mail address. I know ICANN also doesn't have a physical fax number, so it strikes me it's very odd that it's a requirement. It is fine to have it as an option.

KRISTA PAPAC:

Thanks, Reg. Are you talking about when you're providing contact information in the portal, or are you talking about something in the Registry Agreement or both?

REG LEVY:

Both. It's my understanding that the requirement in the portal stems from the actual contract.

KRISTA PAPAC: So it doesn't really tie to the contract the requirement for the portal and with fax numbers, my recollection (and I'm working a little bit from my memory here) there are certain types of contacts that we do ask for a fax number and, while I know it seems very outdated, there are certain parts of the world where fax tends to be our most successful way of getting in touch with them.

It's one of those things where you can't make it required for some and not for others, so it's more of an operational thing than a registry agreement thing. In cases like emergency contact or certain types of contacts, I plan to continue to still require a fax, but I'm happy to discuss that further with you if you'd like.

DENNIS CHANG: Do you have a question, Edmond? Go ahead.

EDMOND CHUNG: Just a comment on one of the points that was presented. On the Exhibit A and Specification 6 on the IDNs, just a slight clarification. Not necessarily any conflicts with the future IDN guidelines but also potential conflict with the current IDN guidelines, so I just want to make sure that that is covered.

Well, there have been cases where it has been identified that there are conflicts between Exhibit A and the current IDN guidelines, and this amendment addresses that issue as well.

DENNIS CHANG: Thank you, Edmond. Next question. Go ahead.

DENISE MICHEL: Denise Michel, Facebook. I'm here on behalf of the business constituency. Could you and/or the panel members give us some more background on the impetus for these particular amendments, how the group of amendments were arrived at, and if there were additional amendments that the group considered but did not include?

CYRUS NAMAZI: Thank you, Denise. This has been a lengthy process, actually, as you saw from the presentation earlier. I think we're coming up to two-year anniversary of when the Stakeholder Group noticed to ICANN with the intent to propose modifications to it.

It started off with a fairly lengthy list of proposed revisions and, over the course of 18-20 months that we were engaged with the Stakeholder Group Working Group, the list was modified. I think

it was shortened considerably. I know that Jon and Susan comment on that as well.

And, at least from my perspective, overall, it ended up being more of a clarification and clean up of language. This was sort of the Draft 1.0 that we all agreed to back in 2013. Not too much substantive issues ended up being a part of it.

I'll let the representatives from the Working Group also comment on it if you like.

JON NEVETT:

Sure. Great question, Denise. Yeah, we started this process in July of 2014, and now we're almost at the end of June 2016, so it's been literally two years. We each had a list of proposed changes that we wanted to discuss. And as per the terms of the Registry Agreement, that's a process that we notify them that we want to discuss changes. They notify us that they want to discuss changes. We just did it together. They shared a list with us. We shared a list with them.

I won't say a lengthy list, but there were a number of items on those lists from two years ago. And they got whittled down because you need agreement of both parties. So if we didn't agree, they dropped it; and if they didn't agree, we have to drop it, and that's why we got down to list of more clarifications.

There are some substantive changes in here that we think are helpful and clarifications that we think are helpful, but the list of issues that we didn't deal with is larger than the list of issues that we dealt with.

SUSAN PAYNE:

Just to add, I suppose that in terms of the list of requirements from the registry side, we basically just discussed it within the Registry Stakeholder Group. So there was a sort of initial call to the list of, what do you think? Do you think we should set this in motion? And those who were interested then participated in a working group, all submitting their suggested issues for negotiation and we ended up with a fairly substantive spreadsheet of issues and amendments we wanted to talk about, which we then swapped with the ICANN staff and worked from there.

CYRUS NAMAZI:

One additional point and it goes to Reg's question before. It's been a while since we actually exchanged the list of items. New ones have come up and people have had some new ideas that we haven't dealt with because we kind of closed the queue in a way probably about three or four months ago, probably even more, six months.

And so the question for the Stakeholder Group in the next few meetings is, should we kick this process off again and start dealing with the pent-up demand for other changes? That sounds like a little frightening, and I'm hearing internal screams from the folks over here.

So that's something we need to decide: are the changes that we haven't dealt with that might go through this process with some success worth the pain of going through it again? Hopefully, it won't be two years but maybe another year of negotiations in doing this public comment and changing all the agreements and publishing everything.

So that's something we need to consider.

KATRIN OHLMER:

One follow-up to Reg question about the fax number and CZDS. Is it still mandatory or voluntarily? I think there have been some confusion whether the fax number has to be provided and CZDS inquiries.

KRISTA PAPAC:

Thanks, Katrin. I know I think there's already a comment in the public comment form about this as well, and that's something we'll take into consideration as we're evaluating the comments and thinking through the earlier point I made about fax number

is sometimes the best way to get a hold of people, which could be useful to registries or maybe not.

But I know there's a public comment already about that. Please feel free to also submit your own comments on that, and we'll definitely consider that when we're reviewing comments. Thank you.

DENNIS CHANG: Go ahead.

UNIDENTIFIED FEMALE: Yeah. I'd appreciate hearing some more background on the changes to 2.10 and 6.7. Why were they done? What do they mean?

JON NEVETT: I'm happy to take those. You asked about 2.10 and 6.7. I'll go with 2.10 first. That's pricing for registry services. The registry has to provide its customers, the registrars, notice of any kind of price change. The notice depends whether it's going up, going down, so there are different notices.

What we did in the original agreement back in 2013, is that ICANN would also get a copy of any notices. And we've been doing it, so if we change the price of one domain name, we have

to notify ICANN and there's nothing that they do with it. They're just – it goes into some holding pattern, I guess.

And so they weren't doing anything with it, and it was a pain for us to send it to them as well. The registrars get notice, so if there's a problem on the registrar perspective, they'll raise it to ICANN anyway. So it was just an administrative burden for both us as registries and ICANN, and it wasn't providing any value, so we cut out the notice to ICANN.

Again, the registrars get notice and, to the extent a registry is ever accused of not following the process or having some issue with the price change or an increase or something like that, they will notify ICANN immediately. That's what the registrar would know to do. And having notices from a thousand registries of different price adjustments didn't make sense from an ICANN perspective.

So that's the genesis to that one. Rubens, do you have something to add?

RUBENS KUHL:

Yes. Just on that, ICANN already doesn't receive information on the initial pricing, so that only applies to prices that are being changed. So that was also an asymmetry that we wanted to fix.

UNIDENTIFIED FEMALE: Thanks. That's a useful point. What's the rationale in ICANN receiving price changes but not initial pricing? Does anyone know?

RUBENS KUHL: No, that's why we are proposing that.

JON NEVETT: It was just a disjoint in the original drafting of the agreement, in my opinion. Okay, 6.7 is probably a longer story. The genesis of this one, this is a Fee Reduction Waiver. We had discussed actual reductions in fees when we first started, and we had other proposals in there from a registry perspective that all got whittled down.

The issue for a Fee Reduction Waiver is to align the registries with the registrars. So for example, the Registrar Accreditation Agreement doesn't have the \$0.18 transaction fee in their agreement and because of that, it used to be \$0.25 and went down to \$0.22 if you did certain things, went down to \$0.20.

So the registrars were able to negotiate different price changes, depending on volume of names and other factors as part of the budget cycle. Because the \$0.25 fee is in the Registry Agreement itself, any kind of reduction would have to go through a full contract amendment.

And so the proposed provision is in there to deal with that situation that if there's an explosion of new top-level domain registrations and ICANN's budget is exploded and they want to have a waiver, we don't have to go through the two-year process of amending the contract. We could just do it as part of a budget process.

We had asked for some more language in there related to transparency and discrimination so that it's not – we didn't want any perception that ICANN could just play favorites and say, "We like you, so we're going to low your fees but no one else's based on the provision." I've heard some of those concerns in the registry-registrar call we had last week, and that's not the intent.

ICANN's position was, "We have accountability and transparency requirements. We don't need to spell it out in this provision even though we asked for it," so they cut that out and so that was their position.

We envision any use of this to be objective, public, and obviously transparent, so that was the goal and the genesis of this Fee Reduction Waiver.

DENNIS CHANG: Any other questions, comments? Anybody behind that [inaudible] there?

UNIDENTIFIED MALE: Where’s the coffee?

DENNIS CHANG: We did have a webinar on this earlier, and that may be why there is less questions at this forum and that’s okay. We do have the public comments period still open, another 15 days, so please go ahead and provide your feedback there.

Unless there’s any – okay, we have one more.

UNIDENTIFIED FEMALE: Two.

DENNIS CHANG: Two?

UNIDENTIFIED MALE: Hello. [inaudible] France. Maybe I didn’t understand all the details about the Specification 13 part about the votes. Are there any special completely detailed roles on the votes of how do you define it’s been accepted by the [branches’] registries?

SUSAN PAYNE:

I'll try. Actually, I'm going to call out the contract just to be sure I look at the right thing. Basically, what the current contract has is a provision that everyone who has clauses 7.6 and 7.7 in their contract, effectively every single registry votes on all changes. And what we were concerned about was that you could have a theoretical situation where you might be an open registry without Specification 13, but you would be voting on a change to Specification 13 that wasn't in your contract.

And this certainly seemed to us to be (certainly seemed to me to be) a not intended consequence of the way that Specification 13 developed and was sort of inserted into the contracts 2 years ago, 18 months ago.

The amendment is to address that so that there is a provision now, which says that if it's an amendment proposed under this collective negotiation process for an amendment to Specification 13, then you need to be one of the registries that has it in your contract to vote through the change.

And specifically, the voting is still – the same kind of criteria has been applied. So there's a two-stage qualification for the voting. First of all, there's a voting based on one vote per TLD, and then there's a safeguard, which is related to the amount of fees paid to ICANN. And effectively, the amount of fees you pay to ICANN

depends on the number of domains you have under management.

Now, personally, I don't feel that that's necessary to stage voting for a brand registry because the number of domains you have and the fees you pay to ICANN is not really the priority of the brand registry. And the value of the brand registry to you, you might have one name but it doesn't mean it's not valuable to you.

But nonetheless, that is what's been proposed. The idea, as I say, is that you vote if you've got the provision in your contract, so you are voting for an amendment that actually affects you.

The other thing to just mention is that ICANN's staff were very concerned that there shouldn't be unfair treatment and, therefore, there is also a kind of veto from the open registries. Cyrus is smiling. This was the subject of a lot of negotiation and debates, and they felt that it was appropriate that open registries, even though they don't have Specification 13, should be able to say, "I know all of you guys have voted yes, but we think this is inappropriate and so we are voting no."

There is a veto in there from all registries if they don't agree with the change. Yeah, I hope – does that help?

FRANCISCO ARIAS: Yeah, that helps. So, just to summarize, if someone wants to make a change to Specification 13, it's only the people who have that would vote. Am I too simple?

SUSAN PAYNE: Effectively, yes.

FRANCISCO ARIAS: Okay. Thank you.

SUSAN PAYNE: So, just to make sure I get this correct, both vote, but it doesn't pass for the Spec 13 provisions unless the second threshold for those with Spec 13 is also achieved.

And then, just one clarification, which is probably obvious but I try not to assume, too often things are obvious. This is a proposed provision for these proposed amendments, this provision would not be incorporated, just be the single vote this time around and if it was included, if this amendment was inked for a lack of a better word, that would be in there for future votes or future amendments.

[BRETT FOSTER]: I have a couple of mechanical questions about the process forward from here. At the end of the public comment period,

assuming that everyone agrees that changes should be made, when would those changes going to affect and then how would they go into effect? Will the base agreement just be deemed amended by this process? Will we have to re-sign an amendment? Just mechanically, will you send something out to us, or how will that take effect?

KRISTA PAPAC:

Thanks, [Brett]. Before that point, after public comments, summary and analysis report, we also work with the Working Group on looking at the public comments. This is all spelled out in the agreement but just for the benefit for everyone. I know Dennis covered this earlier.

An amendment needs to be approved by the vote of the registries, which has two thresholds to cross. It has to be approved by the Board. And then, once all of that happens, the way we're anticipating implementing this – and it's in the public comment forum. I know there's a lot of very dense documents there.

But the way we'd like to implement it is with a global amendment, which basically summarizes what each of the changes are. That global amendment would be sent out to each affected party, contracted registry operator that's affected by it, that has this amendment provision in their contract.

So that's new 2012-round gTLDs, as well as some of the legacies who now have this provision. Nothing needs to be signed, which is really awesome because that's pretty laborious definitely for ICANN and certainly for those that have portfolios of TLDs.

I think that it's a 60-day – you'd get a legal notification from us with the global amendment saying that it's effective in 60 days, and then we go from there.

JON NEVETT:

If I could add one thing. I don't know if you're on the webinar on – when was it? A week or two ago when we discussed this one issue that is open and that Krista referred to as being discussed I guess is what will ICANN show on the website in the resource section for our Registry Agreements? Will it be the old Registry Agreement and then there'll be a click to the amendment that changes that, or will we have essentially an amended and restated version up on the website so you have the current version? And that's still an open issue.

It's an administrative hustle for these guys to go through all the contracts and put all the changes in to each one. But it would be great if that happened because then when you click on your contract, you actually see your contract. You don't have to cross reference any additional amendment to say, "Oh, what does Provision 75 say?" and you pull up Provision 75 and you have

actually the wrong provision because it has been amended and you're not cross referencing it.

So that's an open issue that's being discussed certainly internally at ICANN.

KRISTA PAPAC:

And if I can just follow-up on that. Thanks, Jon. So the way that amendments are today, for anyone who's amended their agreement, you might know this. They work very similar to this, only there are signatures required.

The way that all of the agreements are set up if you go look at your Registry Agreement page 9 or pages if you have multiple TLDs, you have the base agreement that you signed, any subsequent amendments, two character authorizations. It shows the history of everything.

I'm not a lawyer, but the way that I understand it from our legal counsel to the way that our contract is written, it's meant to be amended and this process is meant to deliver an amendment rather than perform a restated agreement.

And to Jon's point, not just an administrative burden but the human error factor is also – all of your agreements are very, very different. These amendments – so you have different Spec 11 provisions, you have different Exhibit As, you've made notice

changes to your 7.9 contact information. Just those are the things that come right off the top of my head right now. The human error factor of trying to restate those is a bit problematic as well.

The other thing I wanted to make sure, I didn't mention earlier, is the other thing that we would publish at the top of the Registry Agreement pages we have what's the current base agreement, which is just the generic version of the base agreement. We would also add the global amendment there, as well as I believe we envision putting a redline of this new base agreement against the old base agreement so you could see what the standard base looks like in a redline form that might make it a little bit easier to decipher.

But to Jon's point, we are still discussing it.

JON NEVETT:

I wonder if there's a way that if you pull the agreement up, any provision that's been amended is highlighted or something like that. I wonder if there's an easy way to put that in. So you know 7.5 was amended. You pull up your contract, and you see it's highlighted or something. You don't see the new language but at least there's, "Alert! Alert! Don't rely on this provision because it's been amended subsequently."

Maybe there's something we could look at it and do something like that or something. Krista doesn't like it. You want to play poker with Krista.

KRISTA PAPAC:

And that's what I want you to think. Success. I completely appreciate where you're coming from. One of the reasons that I think we took this global amendment approach is to make that – it looks a little bit like the chart of changes so you can – if you look at the amendments you guys have today, it has wheretofores and whereas's and a whole bunch of stuff that leads in it says, "We take this out and we replace this." That's actually much more difficult to follow than – it's almost a chart. The global amendment itself is almost a chart of the changes. It's not exactly what you're talking – but we're trying to get there is what I'm saying as we're looking for the most useful but manageable solution. So, anyway, thank you, and we will keep talking with my poker face.

DENNIS CHANG:

Thank you, everyone. We have one more question.

JIM PRENDERGAST:

Sorry. We can't get out of here that quick. Jim Prendergast, The Galway Strategy Group. This is a slightly different take on what

[Brett] said because I think you said, “Well, assuming everybody is okay with these changes.” If you look at the comment period right now, there are comments that are suggesting alternative paths to what’s in the amendment. Could you give a little more insight into what happens when you do have comments that are critical or suggesting something else? How is that going to be resolved? What’s the process there?

KRISTA PAPAC:

Thanks, Jim. Are you guys sick of my voice yet? This is the first time we’re doing this. But overall, the way the negotiation process is articulated in the contract is there basically has a to be agreement between the Working Group from Registry Stakeholder Group and from the registries and ICANN in order for the changes to be deemed okay or whatever. We have to have agreement.

The way I believe we’re envisioning this is taking the public comments. And again, there’s a provision in there also that talks about working with the Working Group staff and the Working Group through the public comments.

Our best current thinking is that through that conversation, we come to some place that we’re in agreement. And then again, it would go to a vote from the registry operators. So all registries

have to agree to it and approve it under the contract, and then again, the Board also has an approval step.

JIM PRENDERGAST: So then, just to follow up, essentially, if somebody is recommending that where ICANN is dropped from the price notification and say somebody is advocating that that shouldn't be dropped, then the negotiating team and ICANN will get together, discuss whether or not you accept that edit or not, and then it goes forward to a vote to the registry stakeholder or the registries.

KRISTA PAPAC: Yeah, I believe so.

JIM PRENDERGAST: Okay.

KRISTA PAPAC: Thank you.

JON NEVETT: There are four comments so far. There's one in that 6.7 [and] [inaudible][.7]. That comment was more along the lines of it should be changed, not dropped. But yeah, I think the process-

wise that's right, Jim. We'll get together after and look at it. If there's an overwhelming outcry about a provision, then obviously we'll have to take that into account and decide what to do about that one.

JIM PRENDERGAST: Yeah, I'm just trying to anticipate the flood of comments on July 12th.

DENNIS CHANG: Go ahead, Keith.

KEITH DRAZEK: Thank you very much. Keith Drazek, Verisign and Registry Stakeholder Group. I apologize for asking this question here in this session and not previously in the various discussions, but in Exhibit A in I think it's Section 1.2 of Exhibit A, there's a reference to dotless domains. And while appropriately, I think it actually confirms that dotless domains are prohibited in the New gTLDs – something that the ICANN Board resolved back in 2013 – there's some new language around the introduction of the use of an RSEP by a registry operator to seek I guess a waiver or permission to be able to use dotless domains. It seems that that might be a possible circumvention of the ICANN Board's position on that.

And there is no explanation or rationale included as to why that language was included or added. I was just hoping that we could get a little bit more clarification about how that got in there, what the intent was, where it came from. That will be helpful. Thanks.

FRANCISCO ARIAS:

This is [an unfortunate] administrative way to present things I guess because this is not new language. What happened is, for reasons that escape my memory, the base agreement as it is published does not contain Section 1 of Exhibit A. I honestly can't remember why. It was three years ago or two whatever it is.

The point is Section 1 is that [inaudible] includes that specific language without change. It is in all the New TLD agreements and even in some of the legacy TLDs that have adopted this new form of agreement. There are indeed some changes related to Section 1 of Exhibit A, but they are not about dotless.

So that language that you have there is indeed permitting dotless. It didn't mention RSEP because, as far as I understand, even if we didn't mention it, every registry, it's as far as I understand, is entitled to request a change to their services. And whether that will pass an RSEP for example, that's a different question.

JON NEVETT:

Thank you. Just to follow-up then. Thank you, Francisco. I'll have to go back and take a look at the previous language just to confirm my understanding. But it seems to me that if we're looking at something like dotless domains specifically – and I'm not addressing some of the other records that were addressed in that session, but dotless domains was specifically prohibited by the ICANN Board – that the appropriate place to reference dotless domains in the New gTLD Registry Agreement would be in Section 2.2 or something similar to the prohibition on wildcarding.

The idea that there might be a submission of an RSEP to seek approval of something that has been explicitly prohibited by the ICANN Board, it seems much more I guess comparable to Section 2.2, which is the prohibition on wildcarding. Not allowing for a registry to submit a proposal, an RSEP proposal, which would have I think a much lower threshold of community input and review and Board consideration potentially than something that might require a change to a Board resolution. Thanks.

CYRUS NAMAZI:

Thank you, Keith. That's a good input. I think we should go back and take a look at it to make sure that the intent here is reflected in what's posted and ultimately adopted.

I just want to make sure for the record that there is no implication here of ICANN and perhaps the Stakeholder Group wanting to provide a backdoor for dotless domain to come back. There's no intention of that at all. I just wanted to state that for the record.

How the redline is presented perhaps may have given rise to that perception. Now again, I also want to echo what Francisco said, which is in terms of any registries being able to submit an RSEP to ICANN for any type of service they want to, they can. There's no way that we could tell them not to.

How we end up processing it and ultimately approving or disapproving it then falls into that category.

JON NEVETT:

So the bottom line is this language is in the current agreements anyway, so it's not a change.

UNIDENTIFIED MALE:

That's right.

JON NEVETT: Okay. Thank you.

DENNIS CHANG: Go ahead, Edmond.

EDMOND CHUNG: Just a comment on that actually from Francisco. In terms of Exhibit A, I think one of the reasons why a few years back it wasn't included is the intention or what was advertised at that time was that it would just reflect what was in the application and it should reference back the approved services based on the application and the PDT and those kind of things and, therefore, it was left blank. And then, subsequently, the language was produced and I guess that led to all this further discussion in this particular round.

And then, a couple of comments. One on the kind of effective agreement, which Jon mentioned. I understand the difficulty that Krista mentioned about the human errors that may be produced if we create an integrated version of a contract. But I think some thinking towards that might be really useful because with the amendments piling up or as they increase over time, it would be useful to have a version – even if you say that version is not the definitive version and if there's any error, go back to the amendments and the original one – that would be useful for

reference just to read through for registries and other people who are trying to read through the agreement. You can have a disclaimer that says, “This version is not the definitive version but just for reference.”

And then, a third comment on Jon’s point about if we do the next round of amendments, we’re probably are looking at even more complications with the older TLDs coming back into this format. And so I wouldn’t expect a shorter time to go through. It would be very optimistic to think about it being shorter than what we did this time.

KRISTA PAPAC:

Thanks, Edmond. On your point about having an unofficial version of a pro forma agreement – and we have heard you guys on this going back even to the webinar and the discussion there – one of the things we’re looking into (and I cannot promise you this in any way, shape or form today, I cannot promise you this but we are looking into it) is to see with – you guys all know we’re working on sort of reconfiguring the GDD Portal. One of the things I’d love to get to is something like that either through the portal or through some other type of technology. It’s very preliminary stages because we just started talking about it based on the webinar.

The point is we're trying to see if there's some way that you could produce something like that through technology that is part of your portal or some other thing. If we get there, great. We'd like to get there, but we're definitely looking into it, having heard your guys' feedback and your concerns.

DENNIS CHANG: All right, then. I think that's the end of those questions, so we will go ahead and close this session. Thank you everyone for coming and participating, and we'll see you again on another meeting.

UNIDENTIFIED MALE: [Inaudible].

KRISTA PAPAC: Sorry. Really quick, I just wanted to thank Susan, Rubens, and Jon, of course, the ICANN staff folks but especially you guys for participating in this. And again, we really appreciate the collaboration and teamwork, so thanks.

JON NEVETT: Thank you.

[END OF TRANSCRIPTION]