The Issue: Vertical Separation of Registry and Registrar Functions

• Should a registry be allowed to act as a registrar for its own TLD?

• Should we reverse ICANN’s decade-long policy on use of registry data by an affiliated registrar?

• Has ICANN conducted adequate analysis and review of the benefits and harms from a reversal of this policy?

• Has ICANN followed its own processes for reversing the policy?
Our Position

- The existing policy prohibiting use of registry data by an affiliated registrar should be maintained.

- To implement and enforce this policy, registries, back-end registry operators, and their affiliates should not distribute domain names in their own TLDs.

- Exception for Single Registrant TLDs (as outlined in ICANN-commissioned CRA Report).

- Possible Exception (or size based exception) for Community-based TLDs if so desired by ICANN community.
What is ICANN’s Policy?

The Policy:

- Revenues and assets of a registry should not be used to advantage an affiliated registrar or to disadvantage a non-affiliated registrar.

- In force since ICANN’s inception
- NOT an ownership limitation
- Variety of enforcement mechanisms used over time
  - Equivalent access/non-discrimination requirement, complex code of conduct, audits, certification and sanctions program
  - Equivalent access requirement and ownership cap
What’s ICANN’s Goal?

- Change policy?
- i.e., permit use of registry assets and revenues to advantage affiliated registrar?
  - To capture the efficiencies of vertical integration, you must (a) eliminate cross ownership limits and (b) eliminate equivalent access requirement.
OR?

- Change enforcement mechanism?
  - Eliminate cross ownership limitation – we agree
  - But what else is needed?

  - Enom proposal – remove the prohibition on distributing names in your own TLD

  - Registry supermajority – prohibit registry/registry backend service provider from selling names in the registry TLD
The Real Risks of Data Co-mingling

- Integrated registry/registrar creates:
  - an incentive to discriminate against unaffiliated registrars.
  - Incentives to engage in “insider trading”

- Registrar gets access to sensitive registry data regarding lookups and traffic that increases risk of abuse and increases domain name prices.

- Over the last 6 weeks, we conducted a survey of 59 small to mid-sized registrars from around the world. Results showed that nearly 70% opposed the change in policy.

- Over 80% of the surveyed registrars were very concerned about preferential access to registry resources and misuse of confidential information

- http://intratldregistryregistrarseparation.org/
How the Game is Played

Cornering the Domain Name Aftermarket

- Identify high value domains.
- Take them out of circulation so they never return to the first-come, first-served registration marketplace.
- Auction or sell at a premium in the aftermarket; or
- Keep the domain for internal monetization (warehousing).
- Likely represents a significant percentage of revenue.

How They Grab the Domains

- Domain Tasting
- Front-running
- For more detailed concerns, read the issues raised by a registrar – page 32 of the Gandi Report
- http://www.gandibar.net/pages/Gandi-report-on-ICANN-domain-name-liberalisation
A change in policy will...

**eNom wins**
- Control of own and competitors TLD data
- See all queries for domain names
- See DNS traffic
- Know exactly when all names will delete
- Engine for jacking up eNom’s profit

**Registrants lose**
- Average registrant disadvantaged
- Unavailability of domains
- Higher prices
- Tasting data – By the time it was caught, all the valuable names were gone
## Clarifying the Positions

<table>
<thead>
<tr>
<th>The Registry Position</th>
<th>The Opposing Position</th>
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</thead>
<tbody>
<tr>
<td>- Registry Constituency Supermajority Position</td>
<td>- NOT a Registrar Constituency Position</td>
</tr>
<tr>
<td>- Bottom up</td>
<td>- Promoted by just a handful of large registrars as our survey shows</td>
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<tr>
<td>- Evidence</td>
<td>- Top down process</td>
</tr>
<tr>
<td>- Builds up the facts</td>
<td>- Supported by incomplete economic analysis</td>
</tr>
<tr>
<td>- Draw your own conclusions</td>
<td>- Supported by self interest</td>
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</table>
eNom’s been saying

**Myth/Spin**
- eNom says the question is: “Whether a registry should be allowed to own a registrar”?
- Can a manufacturer own one of the retail stores that it sells computers through?

**Fact**
- We support permitting cross-ownership.
- This debate is NOT about ownership it is about control and separation of functions.
<table>
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<td>What we are requesting is not a change in ICANN policy</td>
<td>ICANN policy has consistently worked to constrain data sharing and mitigate abuse of data sharing between registry and registrar</td>
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<tr>
<td>Just give us the 2001 contracts. Worked well then with no abuses.</td>
<td>Code of Conduct requirements enforced the policy against data sharing and abuse.</td>
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What is the motivation?

Why? What is their motivation?
- Registries could benefit from selling direct, however
- Quality of the registrant experience is important
- Protecting registrants from abusive practices
- Long term health of the industry

Why? What is their motivation?
- Get to sell direct
- eNom as registrar continues to benefit from equal access and non-discrimination obligations imposed on registries
Process and the Forward Path

- CRA Report recommended that ICANN proceed cautiously and identified two narrow “carve out” models for initial experimentation.

- Proposal from Network Solutions with 100,000 registration allowance reverses policy, goes beyond CRA report
  - could allow a vertically integrated registry-registrar to capture and secure the most valuable names.

- Without adequate analysis of benefits and harms, ICANN should maintain policy and follow CRA recommendations.