

## **PDP Feb 06: Straw Poll Results on Draft Policy Recommendations**

The PDP Feb 06 Task Force held a conference call on 17 November 2006 to confirm support for the draft policy recommendations set out below. The text below shows individual recommendations and voting on each recommendation within the Terms of Reference. The chart at the end of the document summarises voting on the Terms of Reference.

It is proposed that the Sao Paulo working session will confirm support for the proposed recommendations and complete the drafting of the *Task Force Report*.

The policy recommendations which have majority support will be included in the Task Force Report which will be forwarded to the GNSO Council for consideration. Minority positions can be included in that Report and further advice on the next steps for the Task Force can also be included.

## **Term of Reference 1a. Registry agreement renewal**

**1a. Examine whether or not there should be a policy guiding renewal, and if so, what the elements of that policy should be.**

### **Policy Recommendation A: There should be a policy guiding renewal**

Constituency: Yes -- BC, ISP, RC. Abstention -- RyC

Task Force Members: Younger, Cubberley, Doria, Fausett

Note: Discussion noted that there was already a policy guiding renewals in existing registry contracts. Further clarification is needed on actual meaning of vote.

Note: The RyC did not want a minority position. Need clarification on actual text of vote.

### **Policy Recommendation B: There should be a standard term for all gTLD registries that is a “commercially reasonable length”.**

Constituency:

Task Force Members:

Note: The definition of commercially reasonable length was not completed.

### **Policy Recommendation C: There should be a reasonable expectation of renewal for all registry agreements**

Constituency:

Task Force Members:

Note: Confirmation of support for this recommendation is required.

**Policy Recommendation D: There should be a renewal expectancy for all registry agreements.**

Constituency:

Task Force Members:

Note: Confirmation of support for this recommendation is required.

**Policy Recommendation E: There should be a presumption of renewal for all registry agreements.**

Constituency:

Task Force Members:

Note: Confirmation of support for this recommendation is required.

## **Term of Reference 1b. Registry agreement renewal standardization**

*1b. Recognizing that not all existing registry agreements share the same Rights of Renewal, use the findings from above to determine whether or not these conditions should be standardized across all future agreements.*

### **Policy Recommendation F: The ‘right of renewal’ should be standardized for all gTLD registry agreements.**

Constituency:

Task Force Members:

Note: Alistair Dixon to provide updated text.

Note: Clarification needed on text of vote.

### **Policy Recommendation G: The ‘right of renewal’ should be standardized for gTLD registry agreements except where there is an exceptional situation, such as a situation of market dominance or market power.**

Constituency:

Task Force Members:

Note: Confirmation of support for this recommendation is required.

## **Term of Reference 2 – Relationship between registry agreements and consensus policies**

*2a. Examine whether consensus policy limitations in registry agreements are appropriate and how these limitations should be determined.*

### **Policy Recommendation H: Consensus policies limitations are inappropriate.**

Constituency:

Task Force Members:

Note: No vote taken on 2a. Neuman doesn't support any option.

### **Policy Recommendation I: Consensus policies should always apply to all gTLD registries.**

Constituency:

Task Force Members: Nevelt + five other TF members?

Note: Support from Constituency representatives needs clarification. BC supports this recommendation.

### **Policy Recommendation J: Consensus policies should always be applied to all gTLD registries. On an individual basis, during the contract negotiation, a registry could present a situational analysis and justification, which should be posted for public comment before acceptance/inclusion in the contract, for an exception/or modification from a particular consensus policy, due to unique circumstances of how a particular policy would affect that registry. Such an exception will not create any prejudice for extension to any other gTLD registry.**

Constituency:

Task Force Members:

Notes: Clarification required on this option

**Policy Recommendation K: The present limitations to consensus policies are appropriate and should continue.**

Constituency:

Task Force Members:

Note: Clarification of support for this recommendation is required.

***2b. Examine whether the delegation of certain policy making responsibility to sponsored TLD operators is appropriate, and if so, what if any changes are needed.***

### **Policy Recommendation L:**

Explanatory text: certain policy making responsibility should be delegated to the sponsored gTLD operators, but variations can be made, based on characteristics of the sponsoring community. Variations should be discussed/disclosed in charter for public comment. Examples of policy making responsibility to be delegated to the sponsored gTLD operators include but may not be limited to:

Charter and scope of 'sponsored community'

Eligibility to be in the 'sponsored category'

Eligibility for a particular name

The concept of a conflicts/dispute process as a service to the sponsored community

Constituency: Yes -- BC, ISPC, RyC

Task Force Members: Yes -- Nevett, Doria. No -- Younger

Notes:

## **Term of Reference 3 – Policy for price controls for registry services**

*3a. Examine whether or not there should be a policy regarding price controls, and if so, what the elements of that policy should be. (note examples of price controls include price caps, and the same pricing for all registrars)*

*3b. Examine objective measures (cost calculation method, cost elements, reasonable profit margin) for approving an application for a price increase when a price cap exists.*

The group did not reach agreement on whether or not there should be a policy regarding price controls. One constituency stated that it is premature to formulate policy in the area of pricing.

### **Policy Recommendation M (Option 1):**

When a registry contract is up for renewal, there should be a determination whether that registry is market dominant. That determination should be made by a panel of competition experts including competition lawyers and economists. This panel would operate similarly to the panel that reviews the security and stability implications of new registry services.

If the panel determines that there is a situation of market power, then the registry agreement must include a pricing provision for new registrations, as currently is included in all of the largest gTLD registry agreements. If the panel determines that there isn't market power, then there would be no need for a pricing provision related to new registrations, as is the practice in the recent round of sTLD registry agreements.

Regardless of whether there is market dominance, consumers should be protected with regard to renewals due to the high switching costs associated with domain names. Therefore, this policy recommendation is to continue the system of pricing provisions in the current unsponsored TLD agreements with regard to domain name renewals.



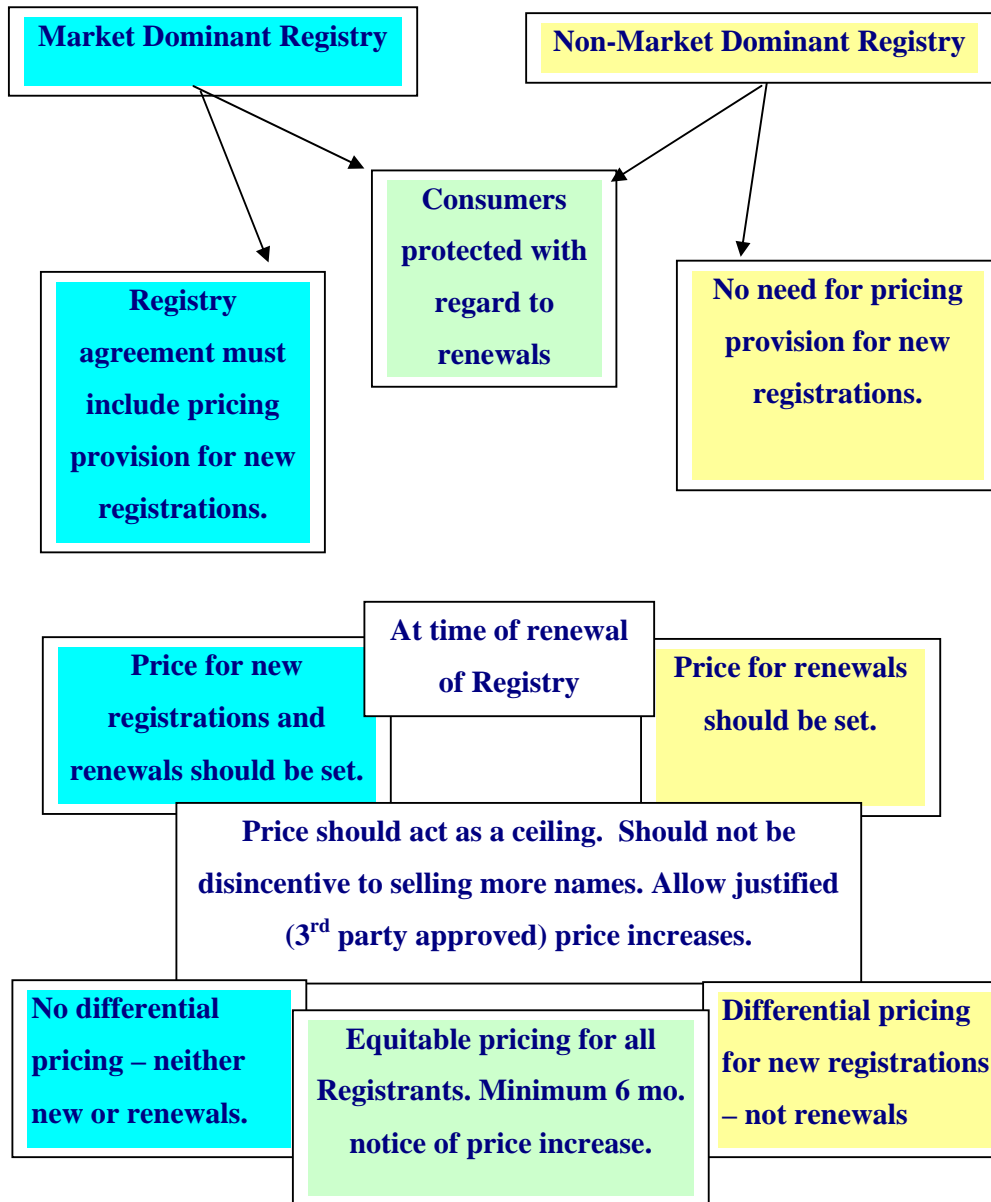
The price for new registrations and renewals for market dominant registries and for renewals for non-market dominant registries should be set at the time of the renewal of the registry agreement. Such a price should act as a ceiling and should not prohibit or discourage registries from providing promotions or market incentives to sell more names. In agreeing on such a price ceiling, ICANN should consider the domain name market, the price of names in the prior agreement, the market price in cases of competition through rebids, and the specific business plans of the registry.

The pricing provision should include the ability for an increase if there is cost justification for such an increase, as is required in the current registry agreements with pricing provisions. Such increases should be evaluated and approved by a third party entity, such as an accounting or financial analyst firm.

Differential pricing between domain names should be prohibited whenever there is a set price/price cap and should be permitted when there isn't such a price constraint. In other words, non-dominant registries may differentially price for new registrations, but not for renewals. Dominant registries may not differentially price for new registrations or renewals.

Finally, as is the current practice, all registries should provide equitable pricing opportunities for all registrars and at least six months notice before any price increase.

## **Sequence Chart**



Constituency:

Task Force Members: Yes -- Dixon, Ruth, Doria, Nevett, Cade. Abstain --  
Cubberley, Maher, Karp, Neuman

Notes: Clarification is needed on the text of the final recommendation.

Justification for the recommendation then needs to be set out separate to the recommendation.

## **Policy Recommendation N (Option 2):**

The NCUC has argued that it is premature to formulate policy in the area of pricing without having had the benefit of an intensely focused study on this topic. They believe that a new PDP is required to address the specific issue of price controls. ("We believe that existing price caps should be left in place for the short term, and another, separate PDP inaugurated on methods and criteria for changing, raising or eliminating price caps in the future.")

Thus, another option is to keep the status quo by encouraging ICANN to continue with existing pricing provisions and initiating a targeted PDP on this issue alone taking into account the upcoming economist's report (<http://www.icann.org/minutes/resolutions-18oct06.htm>).

Constituency:

Task Force Members: Yes -- Younger

Notes: See NCUC detailed statement.

## Term of Reference 4 - ICANN fees

*4a. Examine whether or not there should be a policy guiding registry fees to ICANN, and if so, what the elements of that policy should be.*

### **Policy Recommendation O:**

In order to improve ICANN accountability and effective business planning by registries, ICANN staff should immediately implement a system of ICANN fees from registries that avoids individual negotiations of ICANN fees and provides consistency unless there is established justification for disparate treatment.

Constituency:

Task Force Members: Yes -- Cade, Dixon, Ruth, Nevett, Maher, Neuman, Cubberley, Doria?

Abstain: Karp

*4b. Determine how ICANN's public budgeting process should relate to the negotiation of ICANN fees.*

### **Policy Recommendation P:**

The ICANN Board should establish a Task Force or Advisory Committee to examine budgeting issues, including the manner and allocation of revenue collection, budget oversight, and budget approval processes. This group should solicit and review public comments on these issues.

Constituency:

Task Force Members: Yes -- Cade, Dixon, Ruth, Nevett, Maher, Neuman, Cubberley

Abstain: Karp

Note: The list of budgeting issues contained in the policy recommendation exceeds ToR 4b

## Term of Reference 5 -- Uses of registry data

*5a Examine whether or not there should be a policy regarding the use of registry data for purposes other than for which it was collected, and if so, what the elements of that policy should be.*

### Policy Recommendation Q:

There should be a policy regarding the use of registry data [which includes traffic data] for purposes other than that for which it was collected.

Constituency: Yes -- BC, ISPC, RC. Abstain -- RyC

Task Force Members: Abstain -- Cubberley

Notes: The development of the policy elements for this recommendation needs to be discussed at the Task Force level.

*5b. Determine whether any policy is necessary to ensure non-discriminatory access to registry data that is made available to third parties.*

### Policy Recommendation R:

There should be a policy to ensure non-discriminatory access to registry data that is made available, but that policy should include safeguards on protection against misuse of the data.

Agreed by all the Task Force members that further work is needed at the Task Force level.

## **Term of Reference 6 -- Investments in development and infrastructure**

*6a. Examine whether or not there should be a policy guiding investments in development and infrastructure, and if so, what the elements of that policy should be.*

### **Policy Recommendation S:**

There should not be a policy guiding investments in development and infrastructure. ICANN should, however, establish baseline requirements for the security and stability of the registries and anything above that would be negotiated on a case-by-case basis, if necessary. Such baseline requirements should be recommended to the Board by the Security and Stability Advisory Committee ("SSAC") after consultation with the gTLD registry operators. In determining these recommendations, the SSAC also should solicit and consider public comments.

Constituency:

Task Force Members: Yes -- Cade, Dixon, Ruth, Nevett, Karp, Neuman, Cubberley

Notes: Revised text developed by Jeff Neuman and Jon Nevett.

**PDP FEB 06: STRAW POLL ANALYSIS 17 NOVEMBER 2006 CONFERENCE CALL**

The # indicates a specific note on the status of the recommendation – see next page.

TERM OF REFERENCE	1a#	1b#	2a#	2b	3a#	3b#	4a#	4b#	5a#	5b#	6#	Notes
<b>CONSTITUENCY POSITIONS</b>												
<b>BC</b>	Y			Y					Y			2 reps present
<b>ISPC</b>	Y			Y					Y			1 rep present
<b>IPC</b>	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	No representative on call
<b>NCUC</b>												1 rep present for part of call
<b>RC</b>	Y					Y			Y			1 rep present
<b>RyC</b>	A			Y					A			4 reps present
<b>TASK FORCE MEMBER POSITIONS</b>												
Marilyn Cade (BC)						1	Y	Y		Y		
Alistair Dixon (BC)	?					1	Y	Y		Y		
Greg Ruth (ISP)						1	Y	Y		Y		
Danny Younger (NCUC)	Y			N		2		NP	NP	NP		
Jon Nevett (RC)				Y			Y	Y	A	Y		
David Maher (RyC)						A	Y	Y	A	NP		

Cary Karp (RyC) <sup>1</sup>							A	A <sup>2</sup>	A	A	Y
Jeff Neuman (RyC)							A	Y	Y	A	Y
Maureen Cubberley (NomCom)	Y						A	Y	Y	A	Y
Avri Doria (NomCom)	Y		Y				1	Y	Y?	NP	NP
Bret Fausett (ALAC)	Y						NP		NP	NP	NP
	<b>CONS</b>	3	0	0	3	0	1	0	0	3	0
<b>TOTALS</b>	<b>TFM</b>	4	0	0	2	0	?	8	8	0	7

Legend: Y == support draft recommendation; N == does not support draft recommendation; A == Abstain; NP == not present for vote  
SM == Supermajority support. Please check the votes in each section. The votes have been tallied with GNSO Secretariat and Staff notes and the MP3 recording.

This document sets out the voting on straw polls for each of the proposed policy recommendations conducted on 17 November 2006. Note that there is a mix of constituency votes and individual views. The individual views of constituency members need to be confirmed to demonstrate supermajority support for the vote for the purposes of the Final Report. Note that there is no supermajority constituency support for any of the recommendations.

## RECOMMENDATION NOTES

1a Discussion that there was already policy guiding renewal in existing registry contracts. Further clarification is needed on actual meaning of vote.

1a Registry Constituency did not want a minority position. Need clarification on actual text of vote.

1b Voting on particular recommendation text needs to be clarified.

2a No vote was taken on 2a.

3a The Rapporteur Group did not reach agreement about whether there should be policy regarding price controls.

3b The Rapporteur Group proposed three different options. The “vote” shows the corresponding policy option which was supported.

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<sup>1</sup> Comment from Cary Karp that voting as an individual “peculiar”.



4a Note vote indicated that individuals must return to constituencies to confirm constituency intention.

4b Proposed amended text from Jeff Neuman needs to be included.

5a General discussion on more work required at the TF level.

6 Jon Nevett & Jeff Neuman supported that more work is needed at the TF level. No consensus on policy recommendation about whether there should be a policy or not. Request for further work at the Task Force level. "The Board should seek recommendations from the SSAC to provide baseline security and stability requirements in the registry agreements. In determining these requirements, the SSAC should solicit and review public comments".

