

ICANN'S PICKET FENCE

What is it?

Is it relevant in a post-transition world?

Background - Timeline

- 7 October 1998 - Verisign is sole registry and registrar for .com, .net, .org (and more). Amendment 11 to DOC/Verisign Cooperative Agreement requires Verisign to build SRS, contract with “NewCo”
- 25 November 1998 – DOC/ICANN MOU
- 26 February 1999 – DOC recognizes ICANN as “NewCo”
- 21 April 1999 – 5 competing registrars named: AOL, CORE, France Telecom, Melbourne IT, register.com
- 10 November 1999 - Registry Agreement and Registrar Accreditation Agreement signed 10 Nov 1999
- 2001 Test bed New TLD Round (.aero, .biz, .coop, .info, .museum, .name, .pro)
- 2004 Sponsored TLD Round (.asia, .mobi, .tel, .jobs, .travel, .cat, .post, .xxx)
- 2013 new gTLD RAA and RA

Tension

- ICANN requires flexibility to change the rules/impose new obligations in order to respond to:
 - Address known issues through policy development (e.g., UDRP, WHOIS)
 - Respond to changing environment in order to fulfill its stability, security, and resiliency mission
- Contracted parties require reasonable measure of predictability; contract modifications usually require agreement of both parties
- Solution – give ICANN authority to impose new obligations; but constrain scope and require procedural safeguards



1999 Three Way Negotiations



The Picket Fence – 1999 RA

NSI shall comply, in its operation of the registry, with all Consensus Policies insofar as they:

- (a) are adopted by ICANN in compliance with [old PDP],
 - (b) relate to one or more of the following:
 - issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability and/or stable operation of the Internet or domain-name system,
 - registry policies reasonably necessary to implement Consensus Policies relating to registrars, or
 - resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names), and
- do not unreasonably restrain competition.*

Illustrations – What’s “inside”

C) ...the measures permissible ...shall include, without limitation:

- (i) principles for allocation of SLD names (e.g., first-come/first-served, timely renewal, holding period after expiration);
- (ii) prohibitions on warehousing of or speculation in domain names by registries or registrars;
- (iii) reservation of SLD names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and single-letter/digit names);
- (iv) the allocation among continuing registrars of the SLD names sponsored in the registry by a registrar losing accreditation; and
- (v) dispute resolution policies that take into account the use of a domain name.

Where's WHOIS? 1999 RAA

Public Access to Data on SLD Registrations.

During the term of this Agreement ...Registrar shall provide public access on a real-time basis (such as through a Whois service) to those data elements, that are designated from time to time according to an ICANN-adopted policy, concerning all active SLD registrations sponsored by Registrar in the registry for the .com, .net, and .org TLDs. Until ICANN otherwise designates, this data shall consist of:

- String; IP of primary/secondary nameservers; names of nameservers; Registrar identity; creation and expiration date; name, postal address of registrant; name, postal address, e-mail address, voice telephone number, and fax number of the admin, tech, and zone contact; any other remark

1999 RA Indemnification

Protection from Burdens of Compliance With ICANN Policies.

ICANN hereby agrees to indemnify and hold harmless NSI, and its directors, officers, employees and agents from and against any and all claims, damages or liabilities arising solely from NSI's compliance as required by this Agreement with an ICANN policy adopted after both parties have entered into this Agreement, except that NSI shall not be indemnified or held harmless hereunder to the extent that the claims, damages or liabilities arise from the particular manner in which NSI has chosen to comply with the policy.

2001 New RAA/RA – What’s “inside”

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability ...
- policies reasonably necessary to implement [other Consensus Policies];
- resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names) [**RAA ONLY: including where the policies take into account use of the domain names**]
- principles for allocation of Registered Names (e.g., first-come/first-served, ...)
- prohibitions on warehousing of or speculation [by Contracted Parties];
- maintenance of and access to accurate and up-to-date [whois information]
- Names reservation [avoid confusion, protect consumers/rights holders, tech]
- procedures to avoid disruptions upon [suspension/termination of operations];
- Inter-Registrar transfers

New gTLD RA – What’s “inside”

- Issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet DNS
- Functional/performance specs
- Security and Stability of the registry database for the TLD;
- Registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- Resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- Cross-ownership restrictions.

New gTLD RA - Illustrations

- Allocation principles (e.g., first-come/first-served, renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names;
- reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

New gTLD RA – What’s NOT “inside”

In addition to the other limitations on Consensus Policies, they shall not:

- prescribe or limit the price of Registry Services;
- modify the terms or conditions for the renewal or termination of the Registry Agreement;
- modify the limitations on Temporary Policies (defined below) or Consensus Policies;
- modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
- modify ICANN’s obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

Picket Fence in Post Transition Bylaws

The mission of the Internet Corporation for Assigned Names and Numbers (“ICANN”) is to ensure the stable and secure operation of the Internet’s unique identifier systems ... (the “Mission”). Specifically, ICANN:

- Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies:
- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.

Annex G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registries are:

- Issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD;
- registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Annex G-2 Examples

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination