



# New gTLD Program Explanatory Memorandum Registry-Registrar Separation

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## Background - New gTLD Program

Since ICANN was founded ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles, recognized by the United States and other governments, has been to promote competition in the domain-name marketplace while ensuring Internet security and stability. The expansion will allow for more innovation, choice and change to the Internet's addressing system, now constrained by only 21 generic top-level domain names. In a world with 1.5 billion Internet users—and growing—diversity, choice and competition are key to the continued success and reach of the global network.

The decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008 at the ICANN meeting in Paris. A thorough brief to the policy process and outcomes can be found at <http://gns0.icann.org/issues/new-gtlds/>.

This paper is part of a series of papers that will serve as explanatory memoranda published by ICANN to assist the Internet community to better understand the Request for Proposal (RFP), also known as *applicant guidebook*. A public comment period for the RFP will allow for detailed review and input to be made by the Internet community. Those comments will then be used to revise the documents in preparation of a final RFP. ICANN will release the final RFP in the first half of 2009. For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

## Summary of Key Points in this Paper

- Community requests resulted in the commissioning of an independent report by Charles River Associates (CRA) to study Registry-Registrar Separation.
- The CRA report suggested a limited lifting of the restriction on Registry-Registrar co-ownership. Open consultations in Washington DC and Los Angeles and a public comment forum were held to discuss potential co-ownership models.
- A potential limited co-ownership model, synthesized from the report and discussions, is presented in the revised Applicant Guidebook for discussion.

## Chapter 1: Introduction

ICANN has received input from registries, registrars, and stakeholders in the community over several years on the topic registry-registrar separation. During the development of the policy for the introduction of new top-level domains, the Generic Names Supporting Organization (GNSO) recommended that:

*Registries must only use ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.* (Recommendation 19, <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>).

In November 2007, as part of the 30<sup>th</sup> International ICANN public meeting in Los Angeles, California, ICANN conducted an open session on the GNSO recommendations. A number of viewpoints were raised about registry-registrar separation and potential models.

ICANN committed to undertaking a study of registry-registrar separation requirements and the effects of lifting such restrictions on the marketplace, and most importantly, on registrants.

The opening of the domain name space is intended to promote competition for the benefit of Internet users and registrants. Relaxing the separation requirement should benefit registrants – either by facilitating the development of new products or creating an environment where nascent registries can more easily thrive.

This paper provides detailed descriptions of the issues raised in registry-registrar separation and described the models suggested during the consultations to discuss the CRA Report. This paper is divided into 3 sections:

1. **CRA Report** – a summary of the report from Charles River Associates on Revisiting Registry-Registrar Separation.

2. **Consultation Period** – a description of the comments received during the consultation period on the CRA Report.
3. **Staff Proposed Model** – a detailed explanation on the model proposed by the synthesis of consultations discussing registry-registrar separation with the introduction of new gTLDs.

## Chapter 2: CRA Report

This chapter summarizes the report received from Charles River Associates on registry-registrar separation entitled Revisiting Registry-Registrar Separation. The report discussed the effects of registry-registrar separation in the current environment.

The report focused on registrants, and the effects upon registrants of lifting or keeping the restriction.

### Revisiting Registry-Registrar Separation

ICANN's founding is connected to a core value of fostering competition in the registry and registrar functions. Adding competition at the retail level for domain names is one of ICANN's first major accomplishments

ICANN's policies regarding the relationship between registries and registrars have evolved over time. Current gTLD registry agreements prohibit registries from acquiring directly or indirectly more than 15% of a registrar (since the 2001 agreements).

ICANN requested Charles River Associates International (CRA) to perform economic research pursuant to community discussion described above and two resolutions of the ICANN Board of Directors: 1) the 18 October 2006 resolution of ICANN's Board of Directors seeking more information relating to the registry and registrar marketplace; and, 2) the 26 June 2008 resolution of ICANN's Board, directing the development and completion of a detailed implementation plan for the new gTLD Policy.

CRA engaged in interviews with members of the community over the course of several months in the first half of 2008. The Report is based on economics expertise, research and interviews of various stakeholders between February and June 2008. The CRA Report on Revisiting Registry-Registrar Separation was posted for public comment from 24 Oct to 23 Dec 2008. The CRA Report is available at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>.

*CRA's report makes certain recommendations regarding the relationship between registries and registrars. In particular, the CRA report makes two proposals that might apply to the implementation of the new gTLD program.*

*First, CRA proposes that, for “single organization”<sup>1</sup> TLDs, that organization be permitted to operate both the registry and the registrar that sells second-level domain name subscriptions.*

*Second, CRA proposes that a registry may own a registrar so long as the wholly-owned registrar does not sell second-level domain names subscriptions in the TLDs operated by the registrar.*

The Report sets out the history of the registry-registrar market, from pre-1999, to the 2001 VeriSign Registry Agreement, to the introduction of new gTLDs in 2005, and usage of registrars in the marketplace today.

CRA is examining registry-registrar separation at a time in which the process for the introduction of new gTLDs is in implementation. A number of aspiring applicants aimed at targeted communities are planning to submit applications. There is an expectation that the launch of community-based gTLDs will bring direct beneficial consequences for registrants through enhanced naming, identification and community options.

The paper indicates that economic theory and practical experience in other industries have shown that mandating ownership separation where vertical integration is possible can sometimes hinder, rather than foster, effective market competition. The report stated that cross-ownership would result in innovative bundling of services by co-owned entities, providing new types of access to registrants.

The report suggests that vertical integration could promote the growth of new gTLDs, facilitate registry innovation, and eliminating the 15% restriction may encourage registrars to acquire registries.

It also indicates instances where separation is effective in maintaining a “level playing field”. CRA notes that ownership separation reduces the risk of discrimination as required by the equal access provision. CRA also notes that some of the proposed new gTLD models would be incompatible with vertical separation (e.g., privately held or “.brand” type TLDs are mentioned).

The CRA Report recommends a possible lifting of the current restriction on vertical separation in limited instances: perhaps in multiple steps process that eases the restrictions. To start discussion, CRA suggested two candidate models for gradual lifting of restrictions: a single-organization TLDs; a hybrid model where a registry would be allowed to own a registrar, where the registrar did not serve the registry that it owns (or owns it). These models are meant to inform discussion. CRA’s report suggests that, for registries operating under price caps, the arguments in

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<sup>1</sup> “Single organization” TLDs do not exist in any contractual arrangement and the concept was developed by CRA for the purpose of discussion. There is more detail on the concept in the report.

favor of vertical separation and equal access are less clear-cut.

*It should be noted that there are examples of limited cross-ownership or self-management among gTLD registries today. The parent company of RegistryPro (.PRO TLD) is Hostway, an ICANN-accredited registrar. MuseDoma self-manages up to 4,000 .museum domain names. CORE (Internet Council of Registrars) functions as the backend registry operator of .museum and .CAT, but is also an ICANN-accredited registrar.*

*GoDaddy cites to existing examples of registry-registrar cross-ownership (Hostway & .PRO, the consortium of registrars that formed .INFO, VeriSign's management of .TV, GoDaddy's joint venture for .ME). "There are no such integration restrictions within several major ccTLD name spaces, yet it isn't collapsing, there is robust competition, and the ccTLD space continues to grow."*

### Chapter 3: Consultation on Registry-Registrar Separation

ICANN conducted a public comment period on the CRA Report from 24 October through 23 December 2008. Thirty-two comments were received in the comment period. ICANN also conducted two consultation sessions - one in Washington DC on 11 December and one in Marina del Rey, California on 19 December 2008. The full summary of comments from the consultation period is posted at <http://forum.icann.org/lists/crai-report/msg00035.html>.

The comments divide into: support for continued registry-registrar separation, support for limited cross-ownership, and support for unlimited cross-ownership. All models called for continuing accreditation of registrars, the requirement to use accredited registrars to register second-level names, and a registry contract provision that called for the equitable treatment of registrars.

Unlimited cross-ownership means that the registrar could sell and register names in that registry without limit. Limited cross-ownership means that the registrar can sell and register names in that registry up to a threshold. Beyond the threshold, the registry can only use other accredited registrars.

#### **Cross-Ownership – Finite Threshold Model**

During the Consultation on Registry-Registrar Separation in Washington, DC on 11 December 2008, Jon Nevett of Network Solutions presented the following model. This model is based on adherence to the following safeguards:

- There should be separation between the registry and registrar functions;
- Registries must continue to sell domain registrations through registrars;
- Registries should not discriminate among registrars;
- With a limited exception, a registrar should not sell domain services of an affiliated registry;

- Registries must provide a reasonable notification period before making any pricing changes on domain renewals; and
- ICANN should maintain existing market protections with regard to registries with market power.

The model generally supports the recommendation in the CRA Report that a registry and registrar may be corporate affiliates, but the registrar may not sell the domain name services of an affiliated company, so long as market protection mechanisms are in place and enforced.

Maintaining the requirement for accreditation of registrars by ICANN and the use of accredited registrars will ensure continuation of certain protections and benefits for registrants. Registrars maintain a separate escrow of data located at a geographically distant third party provider. The data is audited and the current agreement specifies the set of circumstances under which the data would be transferred to another accredited registrants. Registrars also provide a customer interface to facilitate the registration of names where the competitive environment works to ensure the development of user-friendly interfaces.

The threshold aspects of the model would permit:

- a registry to sell domain name services through an affiliated ICANN accredited registrar until the registry meets a certain threshold of names, such as 100,000 names.
- Once the threshold is met, the registrar would no longer be able to accept new registrations, but would be permitted to manage its existing base.
- The registrar would not be required to divest these names.
- Other market safeguards would remain in place.

Comments about this model included the belief that the model would help new and small registries reach a sustainable level of registrations to become competitive in the market. This would allow small, community-based TLDs to be supported by an affiliated registrar with an understanding of the needs of the TLD.

Also, it was stated that this model could support so-called single organization TLDs without creating such a classification (which is admittedly difficult).

Other comments suggested variations of this model, proposing thresholds of 20,000-100,000 names. In all cases, registries must provide equal access to all registrars.

Another model supported the suggestion that registries could provide registration services direct to registrants up to a certain threshold, such as 50,000 names without the use of accredited registrars.

During the DC consultation session on 11 December 2008, DotCoop noted that they could support the threshold model of a 100,000 name cap as a reasonable

long-term approach for starting a registry. DotCoop noted that many of the problems they experienced would not have occurred if they had been able to continue to support the names managed by the affiliated registrar, rather than divesting them after six months from launch.

Others supported the idea of the threshold model (at varying levels of name cap) because it would help support proposed TLDs aimed at small linguistic or cultural communities, allowing them to directly serve their community when there may be little interest from other registrars.

The threshold concept was supported by the gTLD Registry Constituency in its comments.

“It would be possible to come up with a numerical threshold of registrations below which relaxation of these requirements could apply, and above which the restrictions would apply. The RyC believes that further study should be conducted on what those thresholds should be and how these registries would transition to new restrictions [upon surpassing the threshold].”

Melbourne IT (supporting the model) recommends that where a registry offers registrations to third parties, the registry should be allowed to operate its own registrar (up to a cap of 50,000 names in total), as well as allowing other ICANN accredited registrars to offer names on the same commercial terms. Upon reaching the cap, the registry would not be able to sell additional registrations (or registrations for other gTLDs). This would assist a small registry to get started, but ensure that if the registry was dealing with large numbers of registrants, the registrants have the option to choose registrars in a competitive market.

Melbourne IT also supports a single-operator closed TLD operating both the registry and registrar functions. To avoid gaming, the operator would be limited to single organizations as the registrant for all second level domain names in the TLD and the registry prevented from licensing registrations to third parties.

### **Cross-Ownership – Unlimited Threshold Model**

Demand Media provided an alternate model for discussion, which supports the cross-ownership of gTLD registries and ICANN accredited-registrars. The model has some support in the CRA Report that registries be able to sell directly to the public through an affiliated registrar. The model requires legal but not ownership separation of registry and registrar functions. In this model, there is no threshold and affiliated registrars could sell unlimited names in the co-owned registry.

The model notes that registrars should be able to own a registry and sell through domain services of that registry but the registry should also be open to other willing registrars. “We believe the objective of enhanced competition in TLDs will

be harmed if TLD operators are not allowed (under equal terms) to also promote their TLD at the retail level via an accredited registrar which is owned by the registry.”

Demand Media supports keeping market safeguards in place for registries with market power. This concept is supported by NeuStar.

Comments from GoDaddy supported the cross-ownership with no threshold approach advocating that the elimination of existing restrictions on registry-registrar cross-ownership will stimulate competition. The comments further state that the limit “provides a warm fuzzy” but if cross-ownership works for the first 50,000 names, there is no sound reason to limit it there. The caps also impose on registrants who want additional domain names in a new name space (or other TLD) to then manage names between two different entities, or incur additional expense in getting their existing names transferred.

### **Cross-Ownership – Zero Threshold (Equitable Treatment)**

NeuStar recommends that registries be able to operate an accredited registrar, as long as the registrar does not sell registrations of the TLD that owns it. The model suggests that a registry should be able to have an ownership interest in a registrar as registrars can already have in a registry under the existing rules.

### **Comments against lifting of registry-registrar separation requirement**

The Intellectual Property Constituency (IPC) urges ICANN to provide its reasoning and assumptions underlying the request to CRA to conduct the report. The IPC also note that the comprehensive economic study has not been done and would be valuable for a number of ICANN initiatives. The IPC is asking for a status update on that study.

The IPC agrees with the CRA report that relaxing of the vertical separation requirement for registries operating under price caps is undesirable.

On single-owner TLDs, the IPC notes this is theoretically possible “but the devil is in the details.” The IPC does not understand why a gTLD operated as a money-making venture should be excluded from the single-owner model. Owners of a collective mark may want to register a gTLD and sell second-level registrations to members. The same may be true of trade associations or franchisors. “The Report’s description of the single-owner model should have made clear what gTLDs should not qualify for the single-owner model.”



The IPC calls the hybrid model proposed in the report deeply flawed and should not be given serious consideration. If not for vertical separation, ICANN may have to take on more monitoring and enforcing compliance.

Others noted that there is no reason to relax the registry-registrar separation under the current market conditions. It may make sense to let registries own registrars or the opposite as long as the registrar does not register domain names in the registry it owns or that owns it, provided there are proper safeguards in place. Data should be publicly available to be able to see who owns these entities.

Public Interest Registry noted that the CRA Report had four major shortcomings:

1. "PIR believes that the public interest in supporting competition does not favor a breakdown of the current separation of registry and registrar ownership. Even more so, the (limited) separation in the current rules, as reflected in the contracts so far, should be made symmetric [registrars should not be permitted to own registries]."
2. "PIR believes that the conclusions of the CRAI Report do not give ICANN a basis for an implicit policy to remove all cross ownership restrictions on new gTLDs. PIR further believes that any policy ultimately adopted should be applicable equally to registries and registrars and to existing and new gTLDs."
3. The proposed experiments in the Report do take account of the risks of self-dealing by registrars that own registries.
4. The creation of the accredited registrar program has led to problems with monitoring compliance and ownership across 900+ registrars. "Blurring lines of registry/registrar ownership would strengthen incentives for the economically strongest registrars to engage in the anti-competitive practices".

PIR believes ICANN should adopt a general policy limiting or prohibiting cross ownership between registries and registrars.

See <http://forum.icann.org/lists/crai-report/msg00020.html>.

PIR also provided a study by Jonathan A.K. Cave titled "A name by any other rows: an economic consideration of vertical cross-ownership between registries and registrars" by Jonathan A.K. Cave of the University of Warwick. The paper is an analysis of the proposal to relax, eliminate or substantially modify cross-ownership of registries and registrars from an economic perspective. The paper sets forth arguments for the continuing necessity of vertical restrictions, and makes recommendations based on the current market.

Cave notes that vertical control can distort competition between registries, encourage registries to become integrated, and may lead to "capture" by market power in a concentrated layer. This may give integrated registrars unfair advantages in bargaining with other registries, and it may give advantages to commercial registries over non-commercial registries that do not own registrars.

Cave states that open-access and price cap controls are essential complements to vertical ownership.

Among the open issues are:

- "The extent of real competition in the registrar market or in the registry market;
- The extent of any anti-competitive behaviour in relation to prices, entry, name access and quality of service and the degree to which this is predatory or collusive;
- Whether competition is actually producing useful efficiencies (lower costs, lower prices, better distribution of name access, incentives to invest in the DNS system or in the economic valorization of names); and
- Whether real (and useful) innovation is going on, as opposed to 'mere novelty.'"

Cave recommends that these issues can be addressed through 1) the development of a unified model considering the current registry-registrar market and the possibility of vertical control by ownership, 2) a panel econometric study of the competitive performance of DNS markets (including market facing ccTLDs) and of efficiency indicators, and 3) a forward-looking analysis based on models with the increase in TLDs.

## Chapter 4: Proposed Model

Based on the CRA report and public participation a model for a limited lifting of the strict registry-registrar separation requirement. The model is for public consideration and comment. It is thought that by proposing a specific model, rather than continuing debate on aspects of a model, the debate would be sharpened and a conclusion would be reached. The model is not an ICANN proposal, it is the synthesis of public comment, the current market situation and the independent report.

Facilitating the start-up and operation of community-based gTLDs has direct beneficial consequences for registrants. Enrichment of the name space with small, targeted registries provides avenues for expression, community participation and regional identity.

The key elements of a proposed limited lifting of restrictions on registry-registrar cross-ownership include the following:

- gTLD registries continue to use only ICANN-accredited registrars;
- Maintain separation between the registry and registrar functions (with separate data escrow and customer interface);
- Registries treat registrars equitably and not discriminate among them;
- With a limited exception, a registrar should not sell domain services of an affiliated registry. This limit is set to a certain threshold, in this model, 100,000 domain names. (The registrar may continue to manage its existing base of registrations once the threshold is met)

- Registries should provide reasonable (i.e., six months) notice before any pricing changes are made on domain renewals.

Understanding that some form of cross ownership exists today, including in commercial ccTLDs, this model provides the benefit of supporting small, targeted registries (including community-based applicants) and start-ups.