

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://intraidregistryregistrar-separation.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

Fact

- 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

The Registry Position

- Registry Constituency Supermajority Position
- Bottom up
- Evidence
- Builds up the facts
- Draw your own conclusions

The Opposing Position

- NOT a Registrar Constituency Position
- Promoted by just a handful of large registrars as our survey shows
- Top down process
- Supported by incomplete economic analysis
- Supported by self interest

What 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**.

What eNom's has been saying

Myth/Spin

- What we are requesting is not a change in ICANN policy
- Just give us the 2001 contracts. Worked well then with no abuses.

Fact

- ICANN policy has consistently worked to **constrain** data sharing and **mitigate** abuse of data sharing between registry and registrar
- Code of Conduct requirements enforced the policy against data sharing and abuse.

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.