

On 8/05/2009, at 9:31 AM, Alexa Raad wrote:

Dear Peter

Ref our conversation less than a week ago, please attached the material pulled together in partnership with NeuStar and Afiliis for the Board retreat. All three registries fully appreciate fully the opportunity to help illustrate the argument against proposed changes to the Registry Registrar separation.

You will find a short (7 page) paper and an accompanying slide deck with the visuals you advised. The slide deck reflects the content of the paper but with the aid of visuals which lay out the FIVE different scenarios the system can be gamed (slide 18- 22) should the proposed changes be allowed to proceed. In the deck there is also an "Appendix" section (slide 29 onwards) which can serve as back-up.

Additionally Ram Mohan, who will be at the retreat can be called upon to explain any questions that may arise.

Thanks for the opportunity!

Alexa A. S. Raad

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I. Introduction

Allowing Registry-Registrar cross-ownership is a major decision that could have a massive and far reaching negative impact on the Internet, end-users, and the entire ICANN community. The Board is urged to protect end-users and promote competition by rejecting cross-ownership in all cases except in very limited specialized circumstances.

This memorandum has a two-fold purpose:

1. To demonstrate that the current ban on cross ownership of registries and registrars serves the public interest and should be maintained for the protection of Internet users; and
2. To inform the Board about schemes (already being announced publicly) to get around the limited ban on cross ownership in ICANN's current proposals for new gTLDs.

The Board is further urged to consider carefully defining the roles and responsibilities of each ICANN contracted party so as to prevent potential anti-competitive abuses that might occur by creative interpretations of contractual provisions.

This paper, a joint work product of PIR, Afiliacorp and NeuStar, provides the context behind these arguments. In addition, in the event the ICANN Board adopts the strict separation of Registries and Registrars as outlined in our proposal for all new gTLDs, we stand committed to amending our existing agreements to reflect such changes

II. Promotion of Market Competition and Protection of Internet End-Users

The separation of functions performed by Registries and Registrars has always been a key factor in the maintenance of competition among Registries. The 1998 "White Paper" implicitly recognized that separating the Registry and Registrar functions, with multiple competitive Registrars, would make it possible for all Registries to have fair access to the Internet user market.

Current ICANN agreements with the unsponsored gTLD Registries generally restrict ownership of Registrars to fifteen percent, but there is no comparable limitation on ownership of a Registry by a Registrar. At this time, there are only a few instances where Registrars have limited ownership of existing registries.

ICANN'S Draft Applicant Guidebook version 2 for new Generic Top-level Domains (gTLDs) (the "Guidebook") includes a draft base agreement for new gTLDs that contains no ownership restrictions on registry/registrar cross ownership. Under this Guidebook proposal, allowing Registrars to own Registries would create a huge economic temptation for Registrars to apply for ownership of new Registries. If this is allowed to happen, a Registrar will have a strong incentive to favor a Registry that it

owns, at the expense of existing Registries and the public benefit that fair competition now brings to users.

Even if there is a prohibition on direct ownership of a Registry by a Registrar, the system can easily be gamed in a number of ways.

In order to understand the complexities in the Registry-Registrar separation issue, it may help to define the players involved. (Please refer to accompanying slide deck # 3 to 5 for a visual description of the following)

- Registry Operator – The entity entering into an agreement with ICANN
- Registry Infrastructure Provider – an entity providing “registry services” for the TLD which is not a party to the ICANN Registry Agreement
- Registrar – An entity accredited by ICANN and under contract with the Registry Operator to distribute domain names within a TLD.
- Reseller – An entity that distributes domain names under an agreement with a registrar, but not under contract with the Registry Operator.

For example, even if Registrars are prohibited from directly providing Registrar services to a co-owned Registry, there is nothing to prevent a Registrar from establishing an affiliate under common control that could provide such services. The economic benefit to the Registrar resulting from this anti-competitive behavior is obvious.

Another more sophisticated maneuver is possible if Registrars are allowed to provide back end services to Registries and benefit from the Registries’ revenues. A large Registrar could easily exert control over market channels for new gTLDs by requiring costly fees to promote a TLD, unless the registry contracted with the Registrar’s affiliated back end service provider. The provider could even demand an equity stake or other interest in the Registry. Registry operators may feel compelled to accept harsh contractual terms to ensure market exposure and a likelihood of success. Rather than increasing competition, cross-ownership, in this example, could significantly reduce competition by creating an oligopoly market consisting exclusively of large Registrars. Smaller back end service providers, resellers or small Registrars who cannot offer wide exposure will be unable to compete effectively.

In anticipation of the new gTLDs, Registrars have been actively luring prospective applicants for Registries to serve as their back-end Registry operator by promising to deliver an established customer base, prominence on the Registrar’s website and guaranteed marketing designed to reach ultimate end users. In other words, these Registrars can promise to deliver exactly what existing Registries cannot - a direct marketing relationship with the ultimate registrant.

This is not just a hypothetical case. A recent press release from Network Solutions¹, one of the top three largest ICANN-Accredited Registrars, announces a new partnership:

*“Central Registry Solutions will **guarantee distribution of domain names for its customers through Network Solutions one of the most trusted retail registrars**. In addition, Central Registry Solutions will leverage CentralNic’s network of registrar partners to provide further distribution of domain names, which will help customers succeed in the marketplace. Finally, Central Registry Solutions will offer other retail services that will enable new registries to package domains with web sites, online marketing services and security services, as well as other value-added services.” [Emphasis added]*

In fact, it has come to our attention that a number of large Registrars are seeking to serve as Registry Infrastructure Providers for new TLD Registry Operators. In doing so, they are leveraging their status as large Registrars to lure perspective Registry Operators. For example, they are telling perspective Registry Operators that should they use another Registry Infrastructure Provider (other than themselves), their Registrar division will charge higher fees for (a) distributing such TLDs and (b) for placement of such TLDs on their affiliated Registrar’s website. However, if the perspective Registry Operator selects the said large Registrar (or an affiliate of the Registrar) to serve as the Registry Infrastructure Provider, those fees would be waived and the Registrar would guarantee distribution and premium placement of such TLDs. Under ICANN’s current and proposed restrictions, which apply only to Registry Operators and not to Registry Infrastructure Providers, this anti-competitive behavior is not only allowed, but would be further encouraged and incented.

It is recognized that within a ban on cross-ownership of Registries (including both Registry Operators and Registry Infrastructure Providers) and Registrars (including their Resellers) there may need to be carefully limited exceptions for smaller Registry Operators that are not well served by Registrars primarily interested in the market for the largest domains. Examples include some of the sponsored domains that are intended for limited audiences. The proposal by the Registries Constituency for a revision in the draft Base Agreement (Section 2.8) for new Registries takes account of this by allowing exceptions for “single registrant” domains (domains in which all registrants are the same entity) and for community based domains with less than 50,000 subscribers. For such domains, the ban on cross ownership would not apply.

The economic strength of Registrars is growing through consolidation, acquisitions and mergers. Blurring lines of Registry-Registrar separation would strengthen incentives for the economically strongest Registrars to engage in the anti-competitive practices described above. It would likely encourage further consolidation and mergers among

¹ <http://about.networksolutions.com/site/network-solutions-and-centralnic-launch-new-joint-venture-called-central-registry-solutions/>

Registrars, Registry Operators and Registry Infrastructure Providers that wish to apply for new gTLDs and lead to predatory pricing that would kill competition through market power. The likely extension of concentrated economic power in the top registry layer would inevitably lead to even more damaging predatory behavior. A lack of Registry-Registrar separation will actually stifle rather than promote competition.

Furthermore, abolishing the separation rules at this juncture and allowing the existing Registry Operators to serve as Registrars and vice versa, immediately prior to a new round of TLDs being selected, is also fundamentally unfair in that the Registrars have had a ten year head start in acquiring large customer bases. This head start will take years to overcome by the existing Registry Operators. The only conceivable result of elimination of the separation rules will be either a complete market consolidation, whereby the existing Registry Operators and Registry Infrastructure Providers either acquire existing Registrars (or vice versa), or force the existing Registry Operators out of business. Neither result is in the public interest, and neither one promotes competition.

III. The CRAI Report and Maintaining Competition

Drawing on its review of the economic principles and the history of the gTLDs, the authors of the CRAI Report² (the “Report”) encouraged ICANN to re-examine the economic case for the separation requirement, and in particular to consider whether it might be possible to relax the requirement initially only in limited cases. Recognizing that it would be “difficult to pull back once regulations have been pulled back,” CRAI encouraged ICANN to move slowly, but deliberately and in consultation with the industry, towards permitting integration of registry and registrar services under many, but not all, circumstances. While the Report suggests some experiments that might help determine whether continued separation of Registry-Registrar ownership is in the public interest, its conclusions do not give ICANN a basis for an implicit policy to remove all cross ownership restrictions on new gTLDs. The proposed experiments in the Report admittedly take account of the risks of self-dealing by Registrars that might own registries. The Report attempts to deal with these by proposing to prohibit Registrars from offering registrations in a registry that it owns, however, as explained above, ownership must be better defined for this solution to be effective. The identities of the parties with ownership interests in most Registrars are not public information. It would be all too easy for Registrars to create new affiliate Registrars to evade this prohibition. The end result would again be a severe negative impact on competition among Registries and among Registrars.

Acknowledging the danger of cross-ownership, the CRAI Report stated that “there is at least a substantial risk, or the prospect of harmful perceptions, that Registries that own Registrars would have incentives to discriminate against unaffiliated Registrar competitors”. The Report further emphasized that,

² <http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf>

“Ownership separation [of Registries and Registrars] significantly reduces or eliminates the risk of discrimination against independent Registrars.”
(Emphasis added)

As stated above, current Registry agreements generally prohibit a Registry from acquiring more than 15% of a Registrar. While the CRAI Report contemplates the effect of market consolidation, the Report contains no discussion of the changing face of the market that is the likely result of the introduction of new TLDs or discussion of the impact on existing Registries.

It is generally accepted that existing Registrars are likely candidates to file applications for new gTLDs. If an existing Registrar were to be granted a new TLD and set up registry operations to run that TLD directly or indirectly, through a Registry Infrastructure Provider, that Registrar would have a significant competitive advantage over the existing Registry Operators if the existing Registries are still subject to the current ownership restrictions. New Registrar-Registry entities would have ready access to existing customer databases and commercial knowledge of products and pricing. This would give the new entities a direct-to-consumer channel not enjoyed by Registry Operators. On the other hand, to create a successful registrar marketing operation would be significantly more costly, difficult, and time consuming.

The principle of “time to market”, or how fast a product can be introduced into a market after its inception is particularly critical in fast changing technology markets. Creating, or even buying and integrating a Registrar, is an enormous challenge and market barrier for a Registry. Many Registrars have long established sales channels and market influence that is not easily replicated. However, performing Registry functions, while complex, is not nearly as great an obstacle for an existing Registrar. This disparity in capabilities would provide a Registrar with a significant advantage in being able to purchase a Registry Operator and have nearly immediate time to market capability for the domains it controls. This single advantage would permanently disadvantage all Registry Operators and present an unfair competitive barrier that will stifle the ability of Registries to compete in the market.

IV. Necessary Contractual Changes for Registries and Registrars to Ensure Fair Competition

In order to carry out the fundamental principle of prohibiting cross-ownership of Registries and Registrars, it is essential to establish clear definitions and guidelines on what constitutes cross ownership. This can be accomplished by a provision in the Base Agreement for new Registries that includes carefully drafted definitions. Attached to this memorandum is the proposal by the Registries Constituency for Section 2.8 of the Base Agreement that would accomplish this.

V. Conclusion

The public interest in supporting competition does not support elimination of the current separation of Registry and Registrar ownership. The end result would be further consolidation of the top tier registrars, gaming of the loopholes in the reciprocity provisions which will, in the very least, provide a “time to market” advantage for select Registrars, among others. These changes would, in conclusion, present a severe negative impact on competition among Registries and among Registrars and harm to end users. Because of the dangers of the competitive abuses described above, PIR, Afilias and Neustar strongly urge the ICANN Board to maintain the separation in the current contracts and as well as maintain the regulations against Registry-Registrar cross ownership for both Registries and Registrars.

ATTACHMENT

Proposal by the Registries Constituency for Section 2.8 of the Base Agreement

2.8 Use of Registrars. Registry Operator must use only ICANN accredited registrars in registering domain names. Affiliates of Registry Operator or of any entity providing Registry Services for the TLD may be ICANN-accredited Registrars, provided that such Affiliates or entities providing Registry Services for the TLD may not distribute domain names in the TLD unless (i) the TLD is a “single registrant” TLD, or (ii) the TLD is “community-based”, provided however that in such event (a) the Affiliates or entities providing Registry Services for the Community-based TLD together may act as a distributor for no more than 50,000 names registered in the TLD and (b) neither Registry Operator nor any entity providing Registry Services for the Community-based TLD may themselves act as an authorized registrar, reseller or distributor of domain names within the TLD through the same entity that provides Registry Services for the TLD.

Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator’s registry-registrar agreement for the TLD. Registry Operator must use a uniform agreement with all registrars authorized to register names in the TLD, which may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.

The defined terms in the above Section 2.8 are as follows:

“*Affiliate*” shall mean a specified person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

“control” (including the terms “controlling”, “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, or otherwise.

“Community-based TLD” shall mean a gTLD that (a) is operated for the benefit of a defined existing community consisting of a restricted population which self-identify as members of the community and (b) applied for the TLD on behalf of the existing community and was awarded the TLD on such basis. For purposes of Section 2.8, the following shall not be deemed to be a community: (i) a subscriber or customer base; (ii) a business and its affiliated entities and (iii) a country or other region that is represented by a ccTLD, or (iv) a language except in cases where the TLD directly relates to a UNESCO recognized language.

“single registrant” TLD shall mean a TLD in which (i) all domain name registrations are registered to a single person, business or other entity and not to any party other than the single person, business or other entity, and (ii) proxy and anonymous domain name registrations are not offered.

The above definitions of “Affiliate” and “control” are intended to apply to the case where a new Registry does not directly own or operate a registrar, but is under common control with a registrar through any means, including, e.g., stock ownership or contract.

Draft Section 2.8 also addresses the case of entities that are not Registries operating under contract with ICANN, but are providing back end services for Registries. The economic interests of such entities are so closely tied by contract to their Registries that they should also be subject to the rules prohibiting cross ownership.

Registry / Registrar Separation Basics

Understanding the Domain Name Eco-system

- The domain name eco-system is a very dynamic and competitive marketplace with multiple players.
- To understand the dynamics of the marketplace one must take a **BIG** picture view.
- One needs to understand the **Five R's** of Domain Name Eco-System:
 1. Registries
 2. Registry Infrastructure Providers
 3. Registrars
 4. Resellers
 5. Registrants

Understanding the Domain Name Eco-system



- ICANN is responsible for the global coordination of the Internet's unique identifiers. All new gTLD Registry Operators are required to enter into a contract with ICANN.



- Registry Operators are responsible for running the day to day technical operations of the registry (Shared Registration System, DNS & Whois) as well as administrative functions (Marketing, finance, legal, policy, channel management, etc.) under an agreement with ICANN.



- Some Registry Operators can provide both administrative and technical infrastructure services in connection with the operation of their TLD, i.e. NeuStar (.BIZ), Afilias (.INFO) and VeriSign (.COM).

Understanding the Domain Name Eco-system



Other Registry Operators subcontract their technical and/or administrative functions to Registry Infrastructure Providers. For example, PIR subcontracts functions to Afilias, TelNic (.TEL) to NeuStar and .jobs to VeriSign. Registry Infrastructure Providers are NOT under a separate contract with ICANN. Thus, ICANN restrictions on Registry Operators may not apply to Registry Infrastructure Providers.



- Registrars are accredited by ICANN through a separate process. Registry Operators are contractually required to use Registrars to provide domain name services to Registrants.

Understanding the Domain Name Eco-system



- Resellers generally only have a contractual relationship with the Registrar and not with ICANN or the Registry Operator. These Resellers sell domain names to Registrants on behalf of the Registrar .



- Registrants are the end user of the domain name.
- Registrants are contractually required to have a contract with the Registrar, may or may not have a contract with the Reseller.
- There is no contract with either ICANN or the Registry Operator.

VeriSign's (.COM) Eco-System



VeriSign has a registry contract with ICANN



VeriSign has contracts with approximately 1,000 registrars



Unknown number of unregulated Resellers in the tens of thousands

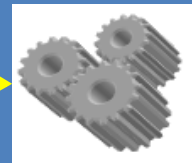


There are 78 million .COM Registrants

Telnic (.TEL) Eco-System



Telnic has a registry contract with ICANN and oversees administration of the .TEL TLD.



Telnic contracts with NeuStar for Registry Infrastructure Services

Telnic has contracts with approximately 125 registrars



Unknown number of unregulated Resellers



There are approximately 125,000 Registrants



Registry/Registrar Separation

How we got here....

- Registry/Registrar separation has been a cornerstone of the ICANN model since its foundation;
- Currently Registry Operators are prohibited from being affiliated with an ICANN-Accredited Registrar.
- Currently Registrars are **not** prohibited from being Registries in the new TLD round.
- Registrars (and their Resellers) are the only ones that have relationships with Registrants and provide services such as hosting, e-mail, virus protection and other value-added services.
- Registry Operators, however, merely provide Registry Services.

CRAI Report

- ICANN retained CRA International (CRAI) to provide an expert economic evaluation of this issue as part of the new gTLD process;
- Detailed analysis of the evolution of the registry/ registrar separation within the domain marketplace;
- CRAI recommended two **test cases** to explore registry/ registrar separation with the following **caveat**;
“Recognizing that it is **difficult to pull back** once regulations have been pulled back, we would encourage ICANN to **move slowly**, but deliberately and in consultation with the industry...”

Problems of Vertical Integration

CRAI Recognized....

“There is at least a substantial risk, or the prospect of harmful perceptions, that registries that own registrars would have incentives to discriminate against unaffiliated registrar competitors. “

“Registrars may have little interest in serving a gTLD owned by another registrar, fearing that discrimination would leave them at a disadvantage. “

“Discrimination could take on multiple forms. For example, registries could offer lower prices to their affiliated registrar, provide better operational support services to their registrar, or give the affiliate better access to registry systems and deleted domain names. “

Problems of Vertical Integration

CRAI Recognized....

“A ‘thick’ integrated registry would have access to information on registrants of unaffiliated registrars that it could share with its registrar.”

“A vertically integrated registry may also institute requirements making it difficult for competing registrars to obtain approval to provide registrations in the TLD.”

“Ownership separation significantly reduces or eliminates the risk of discrimination against independent registrars.”

Problems of Vertical Integration

In addition....

- Existing Registrars have had **10 plus year time to market advantage** to develop their customer base;

Problem

- Existing Registrars have been **actively luring** prospective Registry Operators to serve as their Registry Infrastructure Providers;
- These Registrars have been **representing** they could deliver to prospective registries an established customer base, prominence on their website and guaranteed marketing designed to reach ultimate end users.

Problems of Vertical Integration

These concerns are not hypothetical but REAL.....

- During the recent ICANN regional meeting in Mexico City, NSI and CentralNIC announced the following joint venture.

Network Solutions and CentralNic Launch New Joint Venture Called Central Registry Solutions

Central Registry Solutions™ to provide consulting, registry and registration services for companies and organizations offering new top level domains (TLDs).

Source: <http://about.networksolutions.com/site/network-solutions-and-centralnic-launch-new-joint-venture-called-central-registry-solutions/>

Problems of Vertical Integration

- Central Registry Solution is able to make representations regarding “guarantee distribution”, which existing Registry Operators cannot.

Distribution and Value Added Services:

Central Registry Solutions will guarantee distribution of domain names for its customers through Network Solutions one of the most trusted retail registrars. In addition, Central Registry Solutions will leverage CentralNic's network of registrar partners to provide further distribution of domain names, which will help customers succeed in the marketplace. Finally, Central Registry Solutions will offer other retail services that will enable new registries to package domains with web sites, online marketing services and security services, as well as other value-added services.

ICANN's Proposed Solution

Section 2.8 **Use of Registrars**. Registry Operator must use only ICANN accredited registrars in registering domain names. **Affiliates of Registry Operator may be ICANN-accredited registrars authorized to register names in the TLD, provided, however, that together they may act as registrar for no more than 100,000 names registered in the TLD. Registry Operator may not itself act as an authorized registrar for the TLD through the same entity that provides registry services.**

Problems with ICANN's Proposed Solution

- **Expanded** upon the limited “test cases” recommended in CRAI report;
- **Adopted** an expanded model based upon recommendations submitted from registrars;
- **Disregarded** the concerns of the business and intellectual property communities and USG about increased market safeguard to protect consumers;

Problems with ICANN's Current Proposal

- Restrictions apply only to Registry Operator
- Definition of Affiliation is **undefined** and **ripe for abuse.**
- creates new loop holes to exploit;
- Even if Affiliation is tightly defined, provision totally ignores the domain name eco-system including Registry Infrastructure Providers.

Gaming Scenario #1



NewCo TLD is considering using Registry Infrastructure Provider A



Top-10 Registrar informs NewCo TLD that unless it uses Top-10 Registrar's Registry Infrastructure Provider, Top-10 Registrar and its Affiliates will refuse to offer NewCo TLD to its customers.

Gaming Scenario #2



NewCo TLD is considering using Registry Infrastructure Provider A



Top-10 Registrar informs NewCo TLD that unless it uses Top-10 Registrar's Registry Infrastructure Provider, Top-10 Registrar and its Affiliates will charge NewCo TLD fees to gain access to Top-10 Registrar's "shelf space."

Registrars are NOT required to offer every Registry Operator's TLD

Gaming Scenario #3



NewCo TLD is considering using Registry Infrastructure Provider A



Top-10 Registrar informs NewCo TLD that unless it uses Top-10 Registrar's Registry Infrastructure Provider, Top-10 Registrar and its Affiliates will charge NewCo TLD fees to gain access to Top-10 Registrar's "shelf space" with premium placement.

Registrars are NOT required to offer every Registry Operator's TLD

Gaming Scenario #4

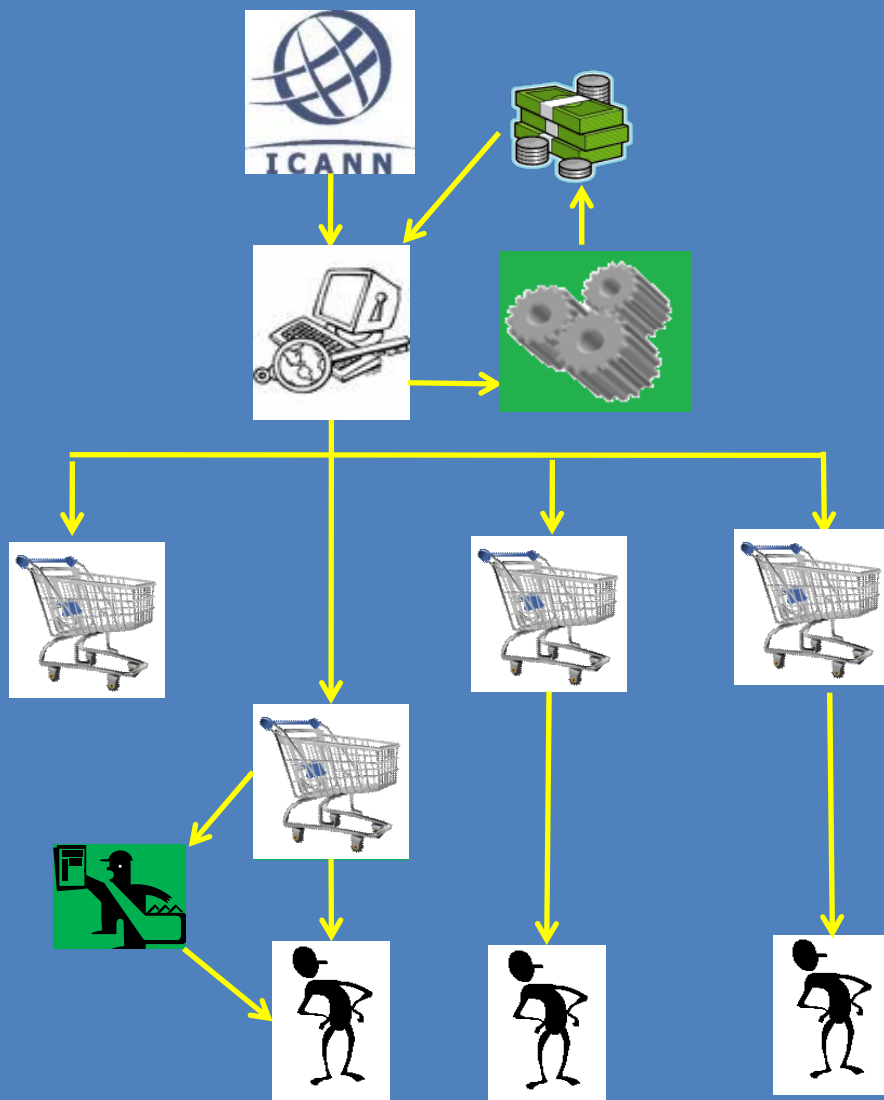


NewCo TLD selects Top-10 Registrar to provide Registry Infrastructure Service. In return Top-10 Registrar and its Affiliates provide priority placement to NewCo TLD.



ICANN's current proposed new gTLD Registry Agreement does not prohibit this arrangement

Gaming Scenario #5



Registrar pays a **“Straw Person”** Registry Operator to apply for a TLD, Registry Operator enters into favorable contractual arrangement with Registrar Registry Infrastructure Provider. Majority of revenue associated with TLD flows through Registrar and its Affiliates.

ICANN’s current proposed new gTLD Registry Agreement does not prohibit this arrangement

Question

- Can the Draft Applicant Guidebook be amended to resolve the issue of Registry/Registrar separation consistent with CRAI's original recommendations while still providing a scalable solution for potential future vertical integration market conditions permitting?

YES

CRAI Report

- Recognizing the need to go slow regarding vertical integration, the CRAI report recommended two limited **“test case”** business models.
- Single organization TLDs, in which the registry and registrants are one and the same;
- A hybrid model in which the vertical separation requirement is relaxed to allow a registry to own a registrar, just so long as the registrar does not serve the registry that owns it (or that it owns).

Solution

- Complete separation of registry/registrar;
- Restrictions apply to Registry Operator and Registry Infrastructure Provider;
- Restrictions apply to Reseller as well as Registrar;
- Limited exemption for true single registrant TLD and community based TLDs (i.e. .MUSEUM)
- In the event the ICANN Board adopts the strict separation of registries and registrars, existing Registry agreements should be changed.
- See Appendix A for specific proposed contractual language.

Solution

- Following the successful launch of the new gTLD process, ICANN can consult with the broader Internet community, appropriate governmental competition authorities, and economic experts to see if further vertical integration is merited and how additional test cases might be explored by ICANN in subsequent new gTLD rounds.
- This represents a controlled responsible expanse of the name space, designed to minimize the potential adverse economic impact on consumers and the marketplace.

Registry/Registrar Separation - Resolution

The ICANN Board has a decision to make

Adopt the **expanded** DAG recommendations supported by the registrars seeking to be Registry Operators and/or Registry Infrastructure Providers



Acknowledge the concerns in the CRAI report that “**sweeping reform may not be feasible and that such a reform, once taken, would be difficult to reverse.**”

Narrowly explore the two “**test cases**” cited in the CRAI report.

Acknowledge the concerns from the business and intellectual property community, as well as the USG

Listen to the concerns/ recommendations of select registry operators

Consequences of Getting it Wrong

- If the decision the ICANN Board makes in approving the final Draft Applicant Guidebook are later proven wrong what are the consequences:
 - **Consumers harmed** by vertically integrated TLD monopolies?
 - **Governmental regulation** directed at ICANN?
 - Market consolidation that **limit/impede** competition, choice and innovation;
 - **Security and stability concerns** raised by massive failures of small/mid-size Registrars and Registries.

APPENDIX -A

REGISTRY/REGISTRAR SEPARATION SOLUTION

Proposed Solution

- The key to the scalable solution resides in Section 2.8 of the proposed Registry Agreement which needs to be amended as follows:

Use of Registrars. Registry Operator must use only ICANN accredited registrars in registering domain names. Affiliates of Registry Operator or of any entity providing Registry Services for the TLD may be ICANN-accredited registrars, provided that such Affiliates or entities providing Registry Services for the TLD may not distribute domain names in the TLD unless

Proposed Solution

- (i) the TLD is a “single registrant” TLD, or
- (ii) the TLD is “community-based”, provided however that in such event (a) the Affiliates or entities providing Registry Services for the Community-based TLD together may act as a distributor for no more than 50,000 names registered in the TLD and (b) neither Registry Operator nor any entity providing Registry Services for the Community-based TLD may themselves act as an authorized registrar, reseller or distributor of domain names within the TLD through the same entity that provides Registry Services for the TLD.

Proposed Solution

- Notwithstanding this limited exemption, the Registry Operator under Section 2.8 is still required to:

“provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with Registry Operator’s registry-registrar agreement for the TLD. Registry Operator must use a uniform agreement with all registrars authorized to register names in the TLD, which may be revised by Registry Operator from time to time, provided however, that any such revisions must be approved in advance by ICANN.”

Solution

- The Registry Operator Agreement would also need to be amended to include the following two definitions:

“Affiliate” shall mean a specified person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

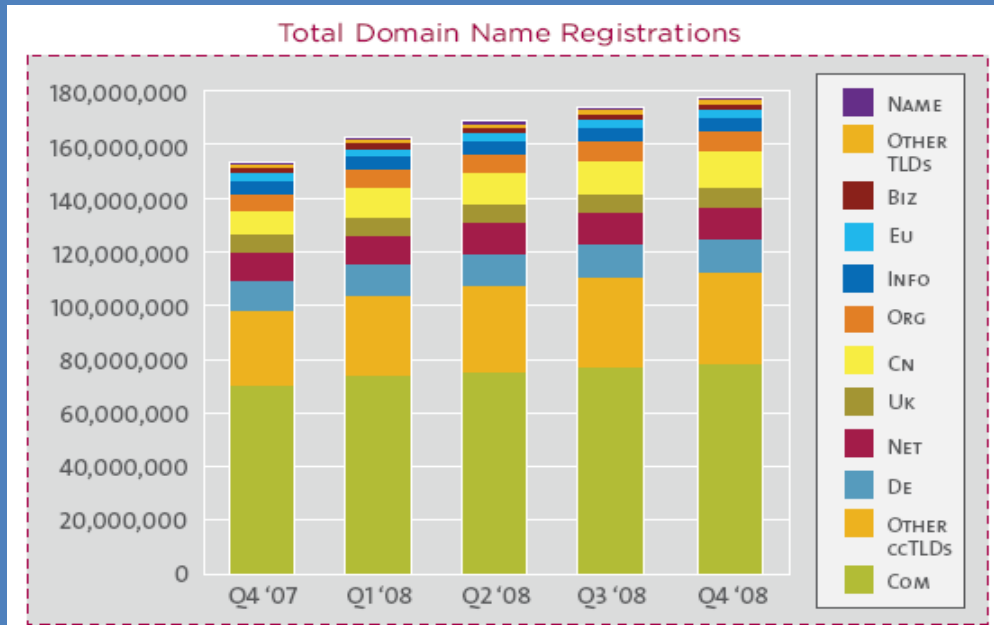
“control” (including the terms “controlling”, “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, or otherwise.

APPENDIX B

DOMAIN MARKETPLACE INFORMATION

Domain Marketplace

- There are currently over 177 million domain name registered, with 106 million within the gTLD space;



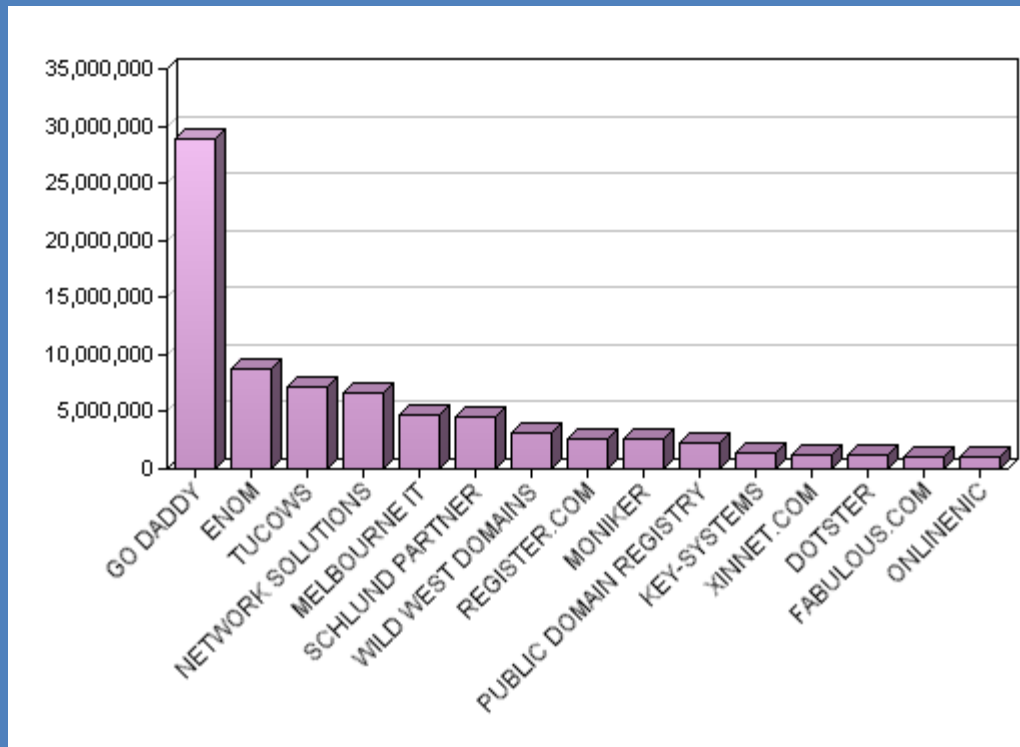
Total Domain Name Registrations

Source: Zooknic, January 2009;
VeriSign, January 2009

- VeriSign is the registry operator for over 91 million names (85%) within the gTLD name space;

Domain Marketplace

- There are approximately 1,000 accredited registrars;



Source: Webhosting.info

- The top 10 registrars (most North American based) account for approximately 70% of the gTLD market;

Domain Marketplace - Infrastructure

- Select registrars are already marketing vertically integrated solutions to prospective TLD applicants;
- Select registrars have already announced their intentions to apply for multiple TLDs and provide vertically integrated solutions/services;
- Despite the CRAI reports recognizing the **inefficiencies** of using registrars in certain TLD models, the DAG continues to require the use of registrars in all TLDs (i.e. registries cannot go direct)

Domain Marketplace - Infrastructure

- In 2000 only three out of the seven TLD registry operators initially built their own backend registry infrastructure, the others subcontracted;
- In 2004 all six TLD registry operators subcontracted out the backend registry infrastructure;
- ICANN has recognized in the DAG that the majority of new TLD applicants will likely subcontract backend registry services to third parties;

Domain Marketplace - Infrastructure

- Is there a **genuine** choice for a prospective TLD applicant in choosing a registry infrastructure provider?

Option A



Meets technical criteria AND has direct access to millions of registrants

Option B



Meets technical criteria AND has direct access to zero registrants.

Domain Marketplace

- These Top 10 Registrars control 70% of the gTLD market;
- Registrars totally control the **“Shelf Space”** that Registries Operators need to have Registrants buy their services;
- Registrars exclusive control of the Registrant’s **“customer relationship”** allows Registrars to leverage their position in the marketplace;
- This leverage can be **positive** (value added services like hosting and email) or **negative** (e.g. taste testing, add storms, expired domains, front-running)

Domain Marketplace - "Shelf Space"

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| <input type="checkbox"/> .mobi | <input type="checkbox"/> .info | <input type="checkbox"/> .biz | <input type="checkbox"/> .tel |
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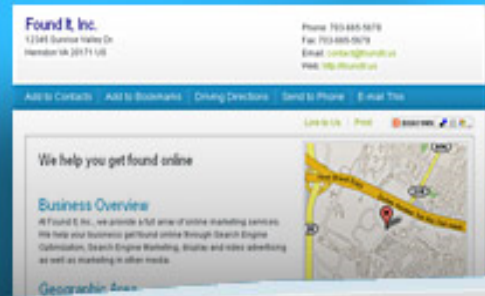
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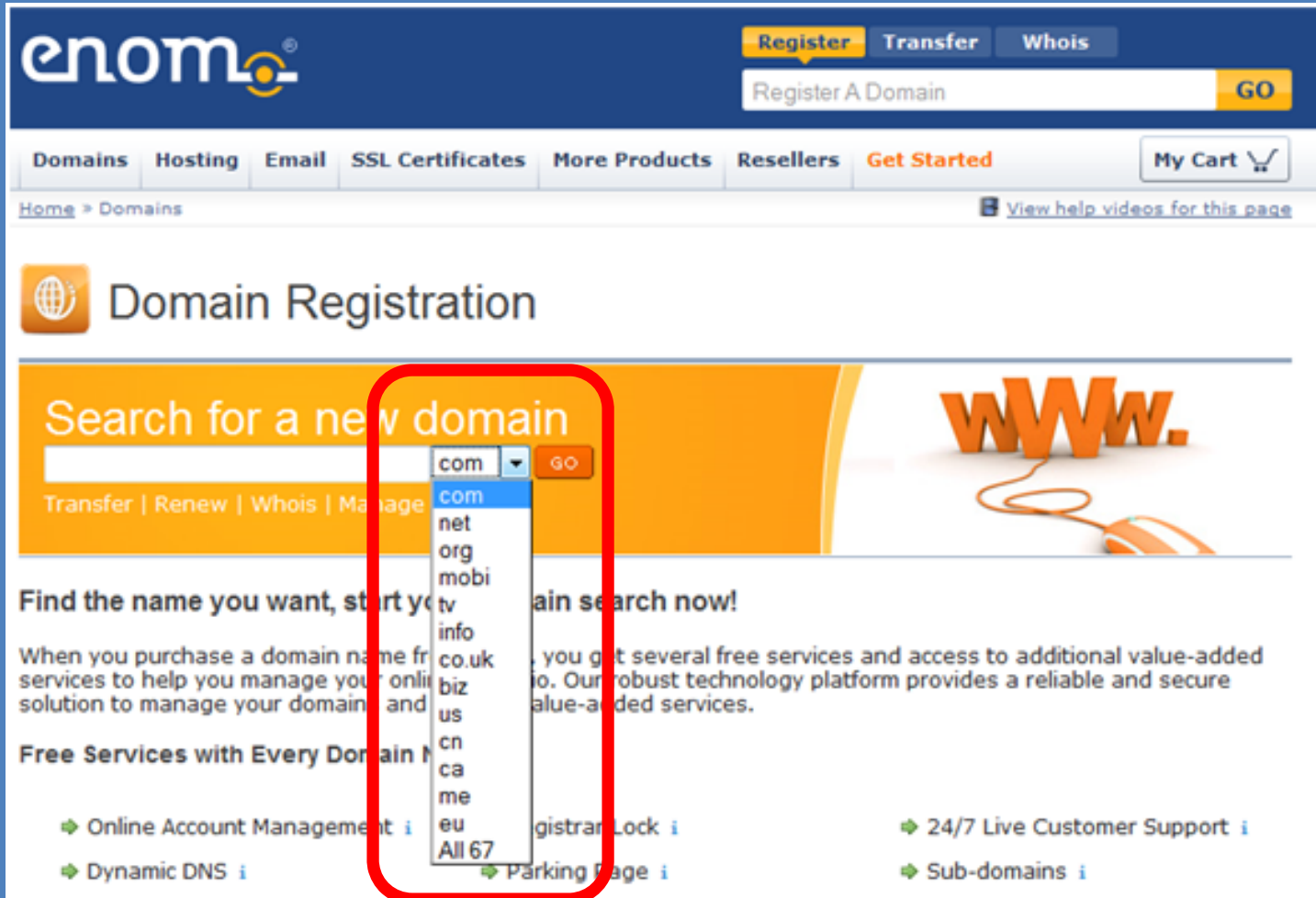
We help you get found online

Business Overview
At Found It, Inc., we provide a full array of online marketing services. We help your business get found online through Search Engine Optimization, Search Engine Marketing, banner and video advertising, as well as marketing in other media.

Geographic Area

Domain Marketplace - “Shelf Space”

eNom



The screenshot shows the eNom website interface. At the top, there is a navigation bar with the eNom logo, buttons for "Register", "Transfer", and "Whois", and a search bar labeled "Register A Domain" with a "GO" button. Below this is a secondary navigation bar with links for "Domains", "Hosting", "Email", "SSL Certificates", "More Products", "Resellers", "Get Started", and "My Cart". The main content area features a "Domain Registration" heading and a large orange banner with the text "Search for a new domain". A search input field is present, with a dropdown menu open showing various domain extensions: com, net, org, mobi, tv, info, co.uk, biz, us, cn, ca, me, eu, and All 67. The dropdown menu is highlighted with a red box. To the right of the search field is a "GO" button. Below the search area, there is text encouraging users to find a name and start a search, along with a list of free services with every domain name, including Online Account Management, Dynamic DNS, Parking Page, Registrar Lock, 24/7 Live Customer Support, and Sub-domains.

Domain Marketplace - "Shelf Space"

- Registrars also seek to control the ("shelf space") for unsuccessful initial searches.

Network Solutions

Sorry The domain(s) you searched for are not available.

[» See More Extensions](#)

business	.com	.net	.tel	.mobi	.org	.us	.us.com	.info	.tv	.bz	.biz	.co.uk	.eu	.de
	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN	TAKEN

[» See options to get taken domain names](#)

[Add Domain\(s\) to Order >](#)

Search Again (domains above will remain in your results)

1 Enter up to 10 names

2 Choose one or more extensions

.com .net .org .us
 .mobi .info .biz .tel
 .eu .co.uk .de .cc
 .tv .cn .name .bz
 .us.com .la .fm .pro
 select all extensions

3 Search

[Search Again >](#)

Registrant originally wanted a .BIZ domain, but registrar provides other TLD alternatives

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<input type="checkbox"/> businessactivities.com	\$3,688
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<input type="checkbox"/> businessresourcecenter.org	\$380
<input type="checkbox"/> businesslines.com	\$3,888
<input type="checkbox"/> floridabusinesslicenses.com	\$1,249
<input type="checkbox"/> diversityandbusiness.com	\$590
<input type="checkbox"/> businessandjobs.com	\$3,988

Domain Names From \$34.99

- industryhome.biz
- businesslocal.biz
- searchbusiness.biz
- bizinc.biz

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