AT-LARGE ADVISORY COMMITTEE

Statement of the ALAC on the
Proposal for Renewal of the .NET Registry Agreement

Introduction
By the Staff of ICANN

Eric Brunner Williams, an individual member of the North American Regional At-Large Organization (NARALO), initially composed two statements on this public comment issue, which gained support with the NARALO membership and, later, with the wider At-Large community. The At-Large staff placed these statements on a wiki workspace and, on 11 May 2011, circulated a call for comments to the At-Large community.

On 15 May 2011, Olivier Crépin-Leblond, Chair of the ALAC, rewrote the initial two statements – based on the At-Large comments entered onto the wiki workspace and received by email – and combined them into a single statement, which underwent another round of community review until 17 May 2011. The resulting statement is presented here.

On 17 May 2011, Olivier Crépin-Leblond requested that the At-Large staff begin a five-day ALAC ratification vote on this statement starting on the same day. Also on 17 May, the Statement was transmitted to the Board, with a note explaining that the document was currently undergoing ALAC ratification, and to Craig Schwartz, the ICANN staff member responsible for this public comment topic (as the At-Large staff was asked to do by Kurt Pritz when he granted permission for this Statement to be submitted after the close of the public comment period).

[End of Introduction]

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The ALAC wishes relate four specific matters of concern emanating from the documents relating to changes to the .NET Registry Agreement, relating to concerns regarding competition, the need to avoid monopoly power and the requirement for transparency in ICANN processes.

1. Legacy contracts vs. post-2001 contracts

The statement of ICANN's position, "ICANN's gTLD registry agreements provide for presumptive renewal so long as certain requirements are met," fails to distinguish between legacy contracts, established before ICANN's existence, and contracts entered into subsequent to the 2001 and 2004 rounds of the new gTLD process, and prospective contracts from any continuation of ICANN's new gTLD process.

This is unfortunate as there are substantive differences of market power exercised by the holder of pre-ICANN registry agreements, and the holders of ICANN registry agreements, and one of ICANN's core public purposes arose from a competition policy goal, which necessitates distinguishing between actors in a market with market power and actors lacking market power.

2. Avoiding monopoly power

The ALAC is also concerned with the fact that the proposed changes to the .NET agreement do not appear to address the core problem of monopoly power by the registry operator. This is a relic from the May 1999 decision to create a locus of competition in a separate registrar function, a decision reversed in November 2010.

The ALAC suggests including language that separates the formal Registry Operator (RO) functions (zone file signing, zone file production from one or more distinct data sources, pointer data to registrar held "thin registry" registrant data, registrar transfer processing, registrar invoicing, ICANN reporting and transactional fee processing and payment) from the Data Base Operator (DBO) ("registry technical services") set of functions, allowing registrants, through their registrars, to select the underlying competitive DBO for a given domain.

This would allow the .NET contract to be modified, allowing a second and subsequent Data Base Operator to provide database service to the Registry Operator, in light of the removal of the structural separation requirement for legacy contracts.

3. Thick WHOIS model vs. thin WHOIS model

Given that .NET and .COM are the only "thin" WHOIS registries, and that all new gTLDs must provide thick WHOIS service, it is unfortunate that ICANN has not included in the renewal of the contract a provision for .NET to transition to a thick WHOIS model at some specific date in the future (perhaps during the term of this agreement but no later than the time of the next renewal).

4. Lack of early stage community input

The ALAC deplores the fact that no community input was allowed at an earlier stage of the negotiations on the new contract. (The ALAC recently expressed this stance in our Statement on the Registrar Accreditation Agreement [RAA], reference AL/ALAC/ST/0511/1, transmitted to the Board on 9 May and available on the ALAC wiki at https://community.icann.org/x/zYbT.) Given that the contractual conditions are matters of policy, it seems inappropriate that these negotiations were held behind closed doors without community observers or input.

We maintain that ICANN is built on a multi-stakeholder model, as described in its organizational diagram, and at no time is "ICANN" restricted to ICANN Staff.