



**Comment on Proposed
Renewal of .COOP
Sponsored Registry
Agreement**

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment on Proposed Renewal of .COOP Sponsored Registry Agreement

The BC is pleased to provide its comments herein, on the “Proposed Renewal of .COOP Sponsored Registry Agreement” (the “Proposal”) posted for comment on June 11, 2018 (see; <https://www.icann.org/public-comments/coop-renewal-2018-06-11-en>).

1. The BC acknowledges and appreciates that GDD has not on this occasion, attempted to unjustifiably expand the eligibility requirements for the registry of .COOP domain names, as it unfortunately did previously in connection with the .MUSEUM Registry Agreement, despite BC comments.¹
2. The BC remains concerned however, that GDD continues to studiously ignore ICANN’s established multistakeholder policy development process as again demonstrated by GDD’s unilateral purported implementation of Uniform Repaid Suspension (URS) to .COOP, a legacy gTLD, notwithstanding that the ICANN community is currently engaged in reviewing the URS and its application to gTLD’s as part of the ICANN GNSO PDP Review of All Rights Protection Mechanisms in All gTLD’s² (the “RPM WG”).

It is concerning that the Proposal creates new policy by imposing the URS on the .COOP registry, when it is the ICANN community which is supposedly engaged in creating policy, not GDD staff.

The multi-stakeholder community has not completed its deliberations on whether URS should become Consensus Policy applicable to legacy sTLDs like .COOP. These deliberations are ongoing in the RPM WG which was initiated by the GNSO as a Policy Development Process (PDP) to review all RPMs at all gTLDs. That WG Charter *specifically tasks it with recommending whether any of the new gTLD program RPMs should become Consensus Policy and thereby applicable to legacy gTLDs*. The WG tasked with evaluating these new RPMs does not expect to complete the task until sometime in 2018. It is an affront to the ICANN community volunteers diligently engaged in the PDP to usurp their proper role in developing policy. If GDD staff make policy outside of the established PDP, it renders the multistakeholder model

¹ See the BC’s Comment on the Proposed Renewal of .Museum Sponsored Registry Agreement, dated October 3, 2017: https://www.bizconst.org/assets/docs/positions-statements/2017/2017_10october_3%20bc%20comment%20on%20museum%20registry%20agreement.pdf

² <https://gns0.icann.org/en/group-activities/active/rpm>

irrelevant, with the community-driven PDP little more than “busy work” while actual policy decisions are apparently made behind closed doors without community involvement or consensus.

The BC objections to this regrettable approach are well known. This is at least the 6th instance in which the GDD has insisted upon proposing such an amendment to a legacy TLD registry agreement and the BC sustains its procedural objection to such proposals, through which GDD staff unilaterally establishes a new status quo for registry agreements. By substituting its judgment instead of GNSO policy development, GDD exceeds its powers and overrides safeguards intended to preserve transparency and inclusion with the multi-stakeholder community.

We make clear at the outset that the BC’s concern is not the adoption of new gTLD rights protection mechanisms (RPMs) for legacy gTLDs, per se. In fact, the BC has been a strong advocate for these RPMs in new gTLD registries and the WG continues to consider fundamental questions about how the new RPM’s should function and how they could evolve in the future. The GNSO may ultimately articulate a Consensus Policy that calls for different measures for legacy gTLDs than are now being used with the new gTLDs. If the GDD persists in forcing registries to adopt these pre-Consensus Policy RPMs, it may widely implement procedures that do not align with the GNSO’s ultimate conclusions. Further, as ICANN policy staff has recognized, application of the RPMs to legacy gTLDs raises certain transition issues that are not addressed by implementation via contract. Finally, in the absence of such RPMs being Consensus Policy, registrants may have legal grounds to question their imposition.

GDD personnel should therefore not continue to set substantive policy for gTLDs by adopting elements of the new gTLD registry agreement into amended and renewed RAs for legacy gTLDs. Moreover, the ICANN Bylaws reserve the power to set gTLD policy to the GNSO. The new RPMs have not, in their current form, received the support from GNSO constituents and have not met the procedure set forth in the Bylaws to become Consensus Policies. While greater consistency between registry agreements is a worthwhile goal, and convenient for ICANN in terms of contractual compliance, it cannot supersede consistency of action in accord with ICANN’s Bylaws.

By circumventing ICANN Bylaws, GDD personnel are also undermining the fundamental principles of transparency and inclusion that are core tenets of ICANN’s mission. GDD personnel are effectuating policy through bilateral negotiations with registry operators, which are only subject to the larger community’s review by way of these proposed amendments and public comments. Imposing RPMs that are under consideration by the RPM Review WG (which is charged by its Charter to determine if they should become Consensus Policy applicable to legacy gTLDs), shows ICANN’s regrettable disregard for ICANN’s multi-stakeholder model.

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This comment was drafted by Zak Muscovitch.

It was approved in accord with the BC charter.