

Registrant Protections (4.3.3)

Deliberations Overview:

The WT has explored and discussed the subject of registrant protections in detail. Under the heading of “registrant protections”, the WT addressed the role of the Emergency Back End Registry Operator (EBERO) in terms of its funding through the Continued Operations Instrument (COI) and the triggers of the EBERO through failures of Critical Registry Functions. In addition, we have discussed the continuing need for Background Screening of Applicants and whether improvements to that process were necessary.

Continued Operations Instrument Deliberations:

- The WT received a number of comments on the limitations and challenges associated with COI requirements as set forth in the Applicant Guidebook.
- The Global Domains Division (GDD) Program Implementation Review Report also acknowledged challenges and suggests an alternative funding option.
- That said, the WT did acknowledge the critical role of having contingency plans to address registry failures. However, several proposals were suggested to replace the COI with other funding mechanisms. They included:
 - a “pooled insurance” model to fund emergency measures
 - eliminate the COI and have ICANN fund EBERO and temporarily maintain an abandon registry out of its regular revenue stream
 - seek proposals from EBEROs (past or future) to see if there is a fixed annual fee that they could be paid for the year to cover any eventuality
- In addition, some have proposed eliminating both the COI and EBERO programs in favor of requiring each back-end registry to be required to continue to provide the critical registry functions in the event of a front end registry operator's failure. If this were to happen, there still may be a need to maintain some form of EBERO in the extremely rare case of the failure of the back end registry services provider itself.
- CC2 comments in regards to the COI tended to support the initial deliberations of the WT. Most comments suggest getting rid of the COI as much as possible. Where ICANN chooses to keep the COI, it is noted by the RySG that the Letter of Credit is the most efficient method of implementation, however, while encouraging ICANN to be more flexible about calculating the size of the Letter of Credit and on determined language for the Letter of Credit.

High Level Agreement so far:

Explore further methods to fund the EBERO process.

From the deliberations, there appears to be consensus to explore a different method to fund the EBERO process. While there is no consensus on what method to explore, it would do well for the WT to discuss these methods and what model would be best.

Next Steps

Further work necessary before recommendations:

1. WT should begin looking at and analyzing some of the suggestions for alternative

funding mechanisms.

Goal: Provide a recommendation to have an alternative method of funding or to keep the COI as is.

Five Critical Registry Functions Deliberations:

- The designation of the five critical registry functions in the Applicant Guidebook was discussed. There were no specific proposals to date that have either advocated for adding, modifying or deleting any of those functions from the list.
- In response to WT questions, ICANN's staff indicated that emergency thresholds had been reached 27 times (as of 17 February 2017, but EBERO had not been triggered in these instances. We note that last week ICANN did in fact trigger the EBERO for the first time: <https://www.icann.org/news/announcement-2017-12-08-en>)
- Until last week, upon GDD's evaluation of each individual case, ICANN determined that it would have less of a security and stability impact to assist the RSP through resolution rather than activating an EBERO event.
- While some of the CC2 comments mentioned maintaining the current registrant protections, re-examining the entire EBERO concept in order to allow better competition, and expanding protections, the majority of comments leaned in the direction of not requiring closed Registries such as Specification 13 Brands to be subject to registrant protections as in many cases the Registry is the single Registrant for these TLDs.
- Other CC2 comments looked at the aspect of when a registry fails financially, but technology does not appear to be a problem, to allow the TLD to remain with the existing RSP.

High Level Agreement so far:

Maintain existing critical registry functions but explore exemptions.

From the deliberations, there appears to be consensus to keep the EBERO process in cases where there is a failure of the back-end services provider. There is also consensus thus far in keeping the triggers for the EBERO process the same as in the Applicant Guidebook with the existing critical registry functions.

The WT is also recommending that single registrant TLDs (including those under Specification 13) be exempt from EBERO requirements.

Next Step

Additional deliberation and possible data request:

1. The WT may want to examine whether or not single-registrant model registries should be exempt from other registrant protections such as data escrow.

Goal: Determine if this is an additional recommendation the WT wants to make.

2. Recently, the EBERO was triggered for the case of .wed. Details of this are still not completely clear. However, the WT may want to consider analyzing further details in regards to that matter when available.

Goal: To analyze the reasoning of ICANN to use EBERO as a mechanism as adverse to

their determination not to act on EBERO in the past when the emergency thresholds were reached. A possible result of this may end in recommendations for clearer guidelines on whether or not to implement EBERO when emergency thresholds have been reached.

3. There are still discussions ongoing about the desire to trigger an EBERO where there is a failure of the front end registry operator and the back end registry services provider is both capable and willing to continue to provide the Critical Registry Functions until such time that either the front end registry failure ends or a new front end registry operator emerges. In addition, further discussion is needed on whether back end registry service providers should be required by ICANN in some fashion to continue to provide the Critical Registry Functions in the event of a front end operator failure.

Goal: *Come to a resolution if we can make a recommendation on this matter. At this stage, we may not be able to make a recommendation about continued registry service in the event of front end registry operator failure, but we should resolve on our capacity to make such a recommendation.*

Background Screening Deliberations:

- The WT discussed whether existing screening mechanisms for applicants were effective at meeting its original intended purpose.
- The WT acknowledged that there is still a desire to ensure that Applicants for TLDs (including their officers and directors) are “good actors”, but WT members noted that this is a difficult issue to evaluate absent specific evidence about issues from the 2012 Round.
- WT members floated the idea of additional possible screening questions for the background evaluation, but no consensus recommendations have emerged..
- One WT member raised concerns about the Applicant Guidebook’s criteria related to cybersquatting as disqualifying criteria, noting that UDRPs are usually against entities and not individuals, so an individual involved may still pass a background screening in the application process. Thus if the anti-cybersquatting criteria remains in the next version of the AGB, additional scrutiny may need to be applied in order to target the individuals that may be in common with those found liable under the UDRP and applicants for TLDs.
- WT members discussed that different approaches may be needed for different regions.
- Some CC2 comments suggested categories of applicants that should be exempt from background screening requirements, such as large, publicly traded companies.

High Level Agreement so far:

Explore exemptions for publicly traded companies.

From the deliberations, it is difficult to address the issues of background screenings in full without further data. However, there has been much agreement on high level aspects such as allowing for Brand owners who run registries and are publicly traded to be exempt from background screening requirements as they undergo extensive similar screenings.

There also has been high level agreement to make improvements to the background screening process to be more accustomed and flexible for different regions of the world.

Next Step

Additional deliberation and possible data request:

1. Discuss what recommendations we can make as to improve the background screening process for applicants from various regions. Also, analyze whether there is data we can request on the background screenings to provide better recommendations for enhancements.

Goal: *Be able to provide recommendations on enhancements to the process.*