

Dear ICANN,

On Friday, January 8, 2016, the Registrars Stakeholder Group was provided with formal notice by ICANN regarding Vox Populi's proposed amendments to the .sucks Registry-Registrar Agreement. Although the cover letter is dated December 18, 2015 and states that the changes take effect on January 3, 2016, we have several serious concerns with the material proposed changes and formally object to the amended agreement.

The ICANN Procedure for Consideration of Proposed Amendments to gTLD Registry Registrar Agreements is set forth at: <https://www.icann.org/en/system/files/files/rra-amendment-procedure-25aug11-en.pdf>. It states that a registry requesting amendment to its RRA must provide ICANN with a copy of its proposed RRA that indicates all changes in redline and a cover note. The registry-provided cover note should describe the purpose of the proposed changes. ICANN shall then forward the documents over to the Registrar Stakeholder Group for review while ICANN undertakes an internal review of the proposed changes. At the close of the 21-day review period, if there are concerns expressed, ICANN will consult with the registry and with the Registrar Stakeholder Group to resolve any such concerns.

According to Vox Populi, their proposed changes are housekeeping in nature and are intended to clarify the purpose of the contract. However, any reasonable reading of their changes to the .sucks RRA would notice that the changes go far beyond mere housekeeping and clarification, but rather convert the agreement to one of Adhesion which interferes with a registrar's ability to offer other products and services.

More specifically:

1. In Section 2.1 Vox Populi attempt to redefine the purpose of the Registry-Registrar Agreement and then states that "Neither party shall take action to frustrate or impair the purpose of this Agreement." It further amends Section 3.2 to state that neither party shall "take any action that could interfere with Vox Populi to provide domain name registrations in the Vox Populi TLDs."

The changes proposed by Vox Populi are so broad and can be read to not only inhibit any Registrar's ability to promote other gTLD domain extensions above that of Vox Populi's TLDs, but also amounts to an unreasonable restraint on a registrar's ability to provide other services. Many Registrars not only serve as retail outlets for the purchase of domain names, but also provide consultative services to their clients on TLD extensions and their domain name portfolios. In conjunction with the provision of those services, registrars often opine on new gTLD and ccTLD extensions, the TLDs policies, pricing methodologies, security provisions and overall utility. These provisions could easily be read to inhibit such activities and restrict a registrar's ability to offer those valuable services. In the spirit of promoting competition, these activities should be encouraged and not restricted through a registry's RRA.

It is no secret that Vox Populi was not happy with the way some registrars characterized the .sucks TLD, its Sunrise Program and pricing methodology. They were not happy that a number of registrars advised their clients against the purchase of .sucks domains. Such discontent was expressed by Vox Populi at the most recent GDD Summit in which one of Vox Populi's principals questioned why he had to continue to using registrars that in his view expressed negative views about the TLD.

It's ironic for a Registry whose slogan is "Foster debate, Share opinions" has now essentially proposed implementing a gag order on the registrars that sell the .sucks TLD by preventing them from doing just that, "fostering debate and sharing opinions."

2. Vox Populi has also added a new provision in section 8.4 which gives Vox Populi the right "at any time and from time to time, amend any or all the terms and conditions of this Agreement. Any such amendment shall be binding and effective 15 days after Vox Populi gives notice of such amendment to the Registrar by email." Although the cover letter couches this new provision as one intended to bring it in line with Vox Populi's agreement with ICANN, nowhere does it state that all material changes must be approved by ICANN. Nor does it account for the well-established ICANN procedure for the amendment of Registry-Registrar Agreements as referenced above.

Registrars understand that registry operators should have certain flexibility with introducing new products and services and with modifying the policies of its TLDs, but to give the sole source provider of .sucks domain names, the ability to change ANY legal term or condition of the RRA is not only fundamentally unfair and could constitute an abuse of its sole source position as registry operator, but also converts each RRA into a contract of adhesion.

We understand that some may argue that if we do not like the proposed changes, we can always stop offering the TLD to our customers. In normal commercial arrangements, this may be possible, but where we have one sole source provider licensed by ICANN to offer the .sucks TLD, such an option is not a viable one. This is one of the reasons historically why ICANN was created – to ensure that registry operators are not able to abuse their position as sole source providers of TLDs.

For the reasons above, we ask that ICANN convene a session between Vox Populi and the Registrars Stakeholder Group's representatives to discuss the proposed changes prior to ICANN's approval. Until such time, the Registrars believe that the amendments are not yet in effect and will continue to operate under Vox Populi's existing RRA.

Please let us know if you have any questions or comments.

Sincerely,

Michele Neylon, RrSG Chair