

Addendum - Proposed Continuing Operations Instrument

ICANN's proposed Continuing Operations Instrument (COI) calls for each newTLD registry applicant to provide for sufficient financial resources to ensure the continued operation of the basic registry functions for a period of three (3) years. The proposed instrument is intended to address the possible risk of registry failure and to ensure continuing service for registrants in the TLD and to facilitate an orderly transition of registrants to a registry operator that is a going concern. Thus, the goal of the instrument is to protect registrants from the possible effects of a registry failure.

The proposed continuing operations instrument, as structured, may in fact undermine two important goals of the newTLD program: 1) protecting registrants from the possible effects of a registry failure; and 2) a newTLD application process that is open to all with costs that do not create unnecessary barriers to entry for applicants.

First, the proposed continuing operations instrument mechanism will require the commitment of significant levels of cash depending on the projected domains under management (DUM) in a newTLD applicant's business model. For example, if the newTLD applicant is projecting DUM of 1,000,000 through year 3, the COI could require no less than a cash escrow of \$4.5 million dollars. (see examples in the table below)

The amounts of cash that could be "tied-up" (e.g. letter of credit; escrow) will create a barrier to entry for most all new TLD applicants except for the very small "shelf" new TLDs. Developing country applicants and new entrepreneurs would be unnecessarily drained of operating funds that could help lead to the success of their new TLD. Additionally, they may be eliminated from the round if they do not have the financial resources required by the COI. Given the levels of cash required by the COI escrow, applicants may be incented to lower their projected DUM in their business models in order to reduce the level of cash commitments required. Gaming of DUM projections in newTLD applications would directly undermine the purpose of providing sufficient resources to protect registrants in the event of a registry failure.

In assessing the risk of registry failure, ICANN should take into account, among other factors, the possibility of registry failure by a large number of newTLD registries, a failure of both small and large registries (as measured in DUM) and failure of registries resulting from unsuccessful business models or poor management. A risk assessment that assumes only small registries will fail (or that a small number of registrants will be at risk) is neither holistic nor prudent. The Registry Fly registrar business failure was a direct result of mismanagement and exposed over 900,000 registrants (and 2,000,000 DUM) to risk.

The Registries Stakeholder proposal to provide a sufficient and ongoing funding source to protect registrants against the risk of registry failover offers a mechanism that would not create unnecessary barriers to entry (compared to the current COI proposed mechanism) and eliminates an incentive to game business model projections by newTLD applicants.

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This addendum has been produced by PIR and Afiliias, supported by some other registries, registry applicants and other interested parties and accompanies the RySG Establishment of Continued Operations Fund proposal.

Examples of projected DUM and COI escrow											
1st yr DUM	2nd yr DUM	3rd yr DUM		1st yr coro (2)	2nd yr coro	3rd yr coro		ICANN escrow = sum of 3 yr cost (1)		proposed 50,000 flat fee	savings to applicants
<10	<10	<10		\$10,000	\$10,000	\$10,000		\$30,000		\$50,000	-\$20,000
1,000	1,500	2,000		\$25,000	\$25,000	\$25,000		\$75,000		\$50,000	\$25,000
15,000	15,000	15,000		\$50,000	\$60,000	\$60,000		\$170,000		\$50,000	\$120,000
25,000	37,500	50,000		\$70,000	\$90,000	\$100,000		\$260,000		\$50,000	\$210,000
50,000	75,000	100,000		\$100,000	\$150,000	\$200,000		\$450,000		\$50,000	\$400,000
A projected large new TLD example											
500,000	750,000	1,000,000		1,000,000	1,500,000	2,000,000		4,500,000		50,000	4,450,000
(1) note as currently drafted in the DAG it appears that the standard \$25,000 ICANN flat fee would be an expense and therefore need to be escrowed which would add \$75,000 to each of the projected current ICANN escrow amounts											
(2) coro - cost of registry operations											

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