New gTLD program: experience, comments, perspectives (RA & RAA procedures development)

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History:

  - .asia, .jobs, .cat, .mobi, .post, .tel, .travel, .aero

- New gTLD start (2012):
  - 1,930 applications

- Process (2012 – 2014?):
  - 17 signed RA contracts
  - No new gTLD Registry functional yet
  - Open ended issues, not a predictable process

- Survivors & winners (2013?-2015?)
  - Most applicants depleted their resources and have no choice but to sign new RA
  - Possible litigation issues (Unilateral change of rules after 185k USD transfers)
  - First General Availability of new gTLD in 2014 (?)
Terms & Definitions:

- We all love abbreviations:
  - RA - Registry Agreement
  - RAA - Registrar Accreditation Agreement
  - TMCH - Trademark Clearinghouse
  - RPMs – Rights Protection Mechanisms
  - PIC - Public Interest Commitments
  - PIC DRP - Public Interest Commitments Dispute Resolution Procedure
  - LOC/COI – Letter of Credit /Continuing Operations Instrument
  - CA – Certificate authority
  - PDP - Policy Development Process
  - AGB - Applicant Guidebook
  - Public Interest – interesting definition in the last RA (p. 30)
Parties & effects:

- ICANN (Staff, CEO, Board, Chairman)
- Old Registries
- Applicants (generic, GEO, brand, community)
- Constituencies & Groups (RySG, NTAG, GEO, Brand, IP, RrSG... GNSO?)
- GAC
- Important “Third parties” (TMCH, URS providers, EBERO, DPT provider)
- U.S. Government
Positive interaction?

- RySG, NTAG, GEO
  - Information exchange point
  - Crowdsourcing (solutions of administrative, legal, technical issues are elaborated and forwarded to ICANN)
  - Less plain criticism, more proposed solutions

- IP, TMCH
  - Some really interesting ideas (11th hour changes, Strawman Solution, no SLA for TMCH e.t.c.)

- GNSO is losing it’s role
  - At the first glance – these working groups do the job
  - Whole picture is not that bright – they do not take into account opinion of other groups
Indicator of IG process:

○ Multistakeholder Model (theory)
  - AGB as a product of Multistakeholder PDP process
  - Unique role of ICANN to follow bottom-up, multi-stakeholder model in open and transparent fashion

○ Process vs. Implementation (reality)
  - Top-down regulatory relationship (we all have right to cancel contracts in 30 days)
  - Unilateral Right to amend RA & RAA
  - Hand-picked special committees (5y Strategic Plan)
  - Public comments, opinion of common with ICANN working groups, results of previous PDP – ignored
  - Lack of transparency and accountability
  - Changes to RA, RAA 2013, new rules (RPMs) outside of PDP process
  - Lots of small changes to AGB, RA made it what we see now
IG or not IG?

- Operational inequality
  - U.S. Stakeholders?
  - Lost Consensus (more new Constituencies, working groups, committees make role of GNSO less relevant)
  - New Role of ICANN as a tool of U.S. Government
  - More and more GAC Advice
  - RA & RAA 2013 are not suitable for most parties outside of the USA (no process of settling these issues exist for both new gTLD Applicants and Registrars)
  - Registrars inequality (only RAA 2013 registrars can sell new gTLDs at cost of harsh restrictions and new obligations)
  - Registries inequality (some CCTLD act as new gTLDs without borders, Old Registries have more freedom and not restricted to old RAA registrars, .COM has NTIA contract)
Marathon distance:

- Old experience is inapplicable
  - CCTLDs – much broader rights, less obligations
  - Registrars – Shopper vs. Shopkeeper experience
  - Old Registries – the closest match, only from technical side

- Importance of financial endurance
  - ICANN’s history of delays, false starts (Digital Archery e.t.c.)
  - Current delay with RA, RAA 2013 execution
  - Open ended issues
  - 2013 Joint Strategic Plan On Intellectual Property Enforcement (obviously, needs to be implemented ...)

- Avoiding Roulette
  - Right choice of experienced consulter
  - Next Run can be yours in years to come
State of affairs:

- **RAA 2013**
  - No Formal process exists to fix local legislation issues
  - Registrars applied for RAA 2013, handed in their filled out forms and waiting for reply from ICANN

- **RA**
  - TMCH (legal & technical & timeline issues)
  - URS (legal & technical issues)
  - PIC DRP (legal issues, no operational process in place)
  - Unknown process of Legal Negotiations (operational issue)
  - RPMs (legal, technical)
  - More GAC Advice soon?
  - Name Collision (Operational, Administrative issue)

- We may hope for new strings to be operational during the spring 2014
Questions?

Thank you!