



**Comments on RySG  
Alternative Proposal  
for Continuity  
Operations  
Instrument in the  
New gTLD Program**

Status:  
Final  
9 Dec 2011

**Commercial & Business Users  
Constituency (BC) Comments**

**GNSO//CSG//BC**

## Submission:

### BACKGROUND:

ICANN has requested public comments on a proposal for Establishment of a Continued Operations Fund (“COF”), as an alternative to the Continuity Operations Instrument (“COI”). Although the issue of the Continuity instrument appeared closed, upon receipt of a proposal from a single constituency of the GNSO, the staff decided to reopen this topic for consideration, and now is requesting public comment.

The COI is a current requirement in the Applicant Guidebook for the upcoming New Top Level Domain (“New TLD”) process. The alternative COF proposal comes from the Registries Stakeholder Group (RySG) and is accompanied by an addendum produced by the Afilias and PIR, supported by some other parties.

The COI is designed to protect registrants in the case of registry failure by ensuring that critical registry operations would continue for at least three years following a registry failure. Each registry is required under the terms of the COI to fund the instrument in a manner that is sufficient to cover that registry’s costs for three years. If necessary, ICANN would have access to the COI to pay for an Emergency Back-End Registry Operator (EBERO), which would provide the critical registry services.

The COF proposal would have each New TLD registry paying \$50,000 into a shared fund regardless of the size of the New TLD. To the extent that doesn’t establish a \$20 million fund, then each New TLD registry also would pay a \$.05 per name fee until \$20 million is funded.

The COF alternative proposal was discussed during a public session held at the Dakar ICANN meeting.

### BC COMMENT:

1. The BC historically has raised numerous concerns about the new gTLD Program’s limitations and flaws with respect to how it will affect existing and future registrants. Among our concerns have been maintaining technical and business standards; background checks for applicants, and a number of other fundamental requirements that were needed to ensure that an applicant has the competence, and the resources to operate a new gTLD registry. ICANN staff responded with some recognition of the risks of registries failing, which resulted in many of the safeguards now in the new gTLD Applicant Guidebook.
2. While recognizing that some proposed entrants to the new gTLD program prefer to lower the costs for launching a new registry, the BC does not believe that ICANN should lower protection mechanisms that are designed to protect registrants and Internet users. The position of the BC is that it is vital to have a responsible approach to the forms of financial instrument in place to protect registrants and users in case of registry failure.

We do not support the approach presented by the Registry Constituency. We do recognize, however, that improvements may be possible to the present COI.

3. The BC is concerned that the proposed COF would be a “one-size-fits-all” solution. A continuity instrument should be adjustable to fit various business models used by new TLD registries (e.g. community, limited linguistic/cultural, brand, traditional for profit, etc.)

For example, a single-registrant, (often called a “.brand”) TLD that restricts registrations to employees, or subscribers does not present the same risk to registrants that a generic word string, and may be better served by a different approach to the COI. Such a .brand applicant should not pay the same amount as a TLD offering names to the general public.

We agree that gTLD strings that are purposely designed for a limited purpose must codify that limitation in their application and contract, and that ICANN should require adherence to such restrictions, especially if such restrictions are the justification for lowered fees in the COI. The BC submits that TLDs with one business model should not be forced to subsidize other TLDs with different business models.

4. We acknowledge that the Guidebook COI proposal is less efficient than the pooled risk approach used in insurance models, since it requires each registry to fund 100% of its operations in case of failure. With that said, it is not clear to the BC that the insurance model is appropriate without greater understanding. And the BC believes that ICANN should not assume insurance underwriting risk for registry failures.
5. The Guidebook COI provides more registrant protection than the registries’ COF proposal, and any proposed changes to the Guidebook COI should go through a rigorous community review process.
6. The BC proposes that once the registry is operating, there should be a mechanism for ICANN to increase or decrease the required COI amount if a registry’s operating experience is significantly different from projections included in the application.

## Constituency Support:

**Rapporteur for this Discussion Draft:** Jon Nevett

### **Level of Support of BC Members:**

This document was posted to BC members for review and comment on 22-Nov-2011.

Draft 2 was circulated to BC members for review and comment on 3-Dec-2011.

Draft 3 was discussed and approved on a BC Member call on 9-Dec-2011.