Report of Public Comments

Title:	**RySG Alternative Proposal for Continuity Operations Instrument**
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Section I: General Overview and Next Steps

The RySG proposal offered an alternative approach to the existing Continuing Operations Instrument that is part of the New gTLD Program.

Here are some questions that public comment respondents were asked to consider regarding the RySG alternative proposal as well as the existing continuing instrument model offered by ICANN.

1. Considering ICANN's Mission, what is the appropriate role for ICANN to create a fund or act as an insurer? Under which circumstances?
   - Can the same end be accomplished through a third party?
   - Will an insurance company underwrite this?
2. The current COI model outlined on the Applicant Guidebook (see: http://newgtlds.icann.org/applicants/agb) is designed to provide some safeguards regardless of the number of gTLD registries that fail.

   For the existing COI model:

   - There will be an incentive to underestimate the projected size of the new registry, and therefore lower the cost of the COI to below what it should be to protect registrants. How could this be addressed?

   For the COF model:

   - Who should determine how much reserve must be set aside?
   - What criteria should be used to ensure sufficient funding and a mechanism to provide registrant protections?
3. In the estimates shown in the addendum (Proposed Continuity Operations Instrument), what are the assumptions can be made in creating the basis for the proposed fund?
4. How should the both the existing COI model and the newly proposed COF model ensure that it appropriately meets the needs of multiple registries sizes from small to large?
5. Will the allocation of costs need to be adjusted over time if new registries enter the pool after

the target balance is achieved? How can this account for some level of predictability and fairness for all registries?

6. What appropriate level of internal resources should ICANN have for collections, tracking of deposits and outlays from the fund?
7. What are the foreseeable challenges to move funds in timely manner to various parties as required responding to emergency situations?

Section II: Contributors

At the time this report was prepared, a total of eleven community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Leap of Faith Financial Services Inc.	George Kirikos	GK
INTA Internet Community	Claudio Di Gangi	INTA
Public Interest Registry	Paul Diaz	PIR
Intellectual Property Constituency	Steven Metalitz	IPC
Minds + Machines	Anthony Van Couvering	AVC
.MUSIC	Constantine G. Roussos	CGR
Global Digital LLC	Matt Harper	MH
Marques	Nick Wood	MARQUES
Escrow.com	Brandon Abbey	BA
Commercial & Business Users Constituency	Steve DelBianco	BC
CADNA	Samantha Demetriou	CADNA
RNA Partners, Inc.	Ronald N. Andruff	RA

Individuals:

Name	Affiliation (if provided)	Initials

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Twelve submissions were received during the public comment period on the RySG Alternative Proposal for Continuity Operations Instrument.

We still believe that the Registries Stakeholder Group (RySG) alternative proposal – the Continuing Operations Fund (COF) – is a better approach to achieving ICANN's presumed goals of

(a) guaranteeing the continuity of the five "critical registry functions" in the event of a new TLD business failure and
(b) avoiding unnecessary barriers of entry in the new TLD application process.

By escrowing a $50,000 fee per new gTLD upon execution of each Registry Agreement, ICANN will have available substantial resources to ensure continuity of the key registry functions. As was made clear in Dakar, applicants from many jurisdictions will face significant challenges finding a financial institution that meets ICANN's stringent requirements to be an acceptable issuer of a Letter of Credit. Since the COF wouldn't take effect until the new gTLD contract is awarded, successful applicants would only have to secure such necessities as the need actually arises. The COF approach also offers a more predictable way forward in the face of ongoing uncertainties. Ultimately, ICANN and the community have precious little time to analyze and debate COI alternatives. While it's usually good to have options, further delay should not be one of those options. Adding any more uncertainty to the application process is definitely not in the public interest. We believe the COF approach offers ICANN a credible and easy to understand alternative to the existing COI model.

(PIR - 02 Dec 2011)

ICANN should reject this preposterous proposal, which would position itself as an "insurer" for bad actors. Since ICANN has no ability to even assess the risks (having not done the proper economic studies in the first place), not only should it not operate as an insurer, it needs to halt the new TLD process and complete the required studies, instead of jumping to a predetermined outcome that favors itself and its insiders at the expense of the public. Since ICANN has created this precedent of opening up comment periods developed by independent parties, and highlighting them on the ICANN homepage and through their announcements mailing list, we demand equal time.

If any prospective registry operator wants a concession on risk premiums, it must give up something. The "trade" can't be one-sided. In particular, if there is any concession, a registry operator MUST do ALL of the following, BEFORE entering into a registry agreement :

(1) implement permanent and mandatory price caps that can never exceed the price of a dot-com registration, AND
(2) not auction off initial "premium" domain names, nor keep them for the registry itself or its friends, AND
(3) give up their 'presumptive renewal', allowing the TLD to be tendered every 5 years, so that consumer welfare is maximized via competitive bidding.

(GK - 18 Oct 2011)

The RySG Proposal suggests amending the Applicant Guidebook to replace the COI with a risk pooling Continued Operation Fund (COF). We believe the RySG Proposal for a COF is likely to produce a number of unintended, but harmful consequences and should not be incorporated into the new gTLD program. the RySG's goal of lowering the barrier to entry for new gTLD registry operators by lowering the amount of capital "to be tied up", interjects risks to the stable and reliable operation of the domain name system because the Proposal would attract undercapitalized companies that otherwise could not meet the current COI requirements in the Applicant Guidebook. Accordingly, the Proposal seeks to subsidize certain registry operators instead of allowing the market itself (via letter of credit based upon applicant viability) to determine the level of risk for each applicant. By lowering the capitalization requirements there is a risk that the COF model allows market entrants without appropriate funding levels.

Spreading the risk of failure equally among all new gTLD applicants is fundamentally unfair to the financially sound and less risky entities that may apply. Undercapitalized new ventures are far more likely to fail than established applicants. Considering ICANN's mission, it is not appropriate for it to act as an insurer nor does ICANN have the requisite experience and staffing. We strongly recommend against ICANN adopting the COF model.

(*INTA - 01 Dec 2011)*

IPC does not support the proposed COF for the following primary reasons:

a. It is a cost-shifting mechanism which will shift costs away from undercapitalized applicants and place them on credit worthy applicants.
b. It allows more underfunded applicants into the application pool which will in turn lead to more registry failures, cost to ICANN, and poor outcomes for registrants. While this may be good in the short term for members of the Registry Stakeholder Group (RySG) who desire to provide backend services to such underfunded applicants, the short term economic gain of members of one SG should not be prioritized over the risks to registrants and ICANN that the COF represents.
c. It places ICANN in the position of insurer, which ICANN is not licensed to be. Any party seeking to delay or stop the new gTLD program will be handed an issue ripe for litigation and upon which ICANN will most certainly lose.

There is no substitute for ICANN allowing only financially stable applicants into the registry pool as anticipated by the Guidebook. Although rejecting the proposed COF may shrink the pool of potential RySG customers, ensuring a large customer pool for the RySG is not part of ICANN's mission.

Further, ICANN is not licensed or authorized by its formation documents to offer insurance products.

The COF should be rejected by ICANN. At a minimum, ICANN should allow an opt-out for creditworthy applicants to supply the letter of credit anticipated in the Guidebook.

(*IPC - 02 Dec 2011)*

The current COI/COF is significantly flawed because it fails to consider two important facts that can be corroborated:

1) There has never been a registry that has failed in the history of ICANN's existence. Taking the 100% risk-free approach of assuming all registries will fail does not make statistical sense since the probability for this to happen is negligible.
2) Applicants should be given clarification by ICANN the premise of the $185,000 application fee where a large portion of the application fee is reserved for liability and risk-aversion by ICANN and how it relates to the COI/COF. Both seem to be interconnected.

I do agree that ICANN needs to protect itself from liability and reduce risk. Applicants should assume that risk but the risk methodology needs to be consistent with actual numbers, statistics and verifiable track records of backend-registry failures. ICANN will be verifying the backend DNS registry

provider has the technical capability to run the TLD at hand, which is another measure of reducing risk. Nearly all applicants will not be building their own DNS backend registry and will be using proven players in the Industry with zero failure track history. This lowers ICANN's risk. If the backend registry provider does not meet the technical requirements set by ICANN then the applicant will be rejected. That is another measure of risk-aversion that has not been taken into consideration by ICANN while drafting their COI/COF plan.
(CGR - 03 Dec 2011)

If a potential applicant for a new gTLD registry is not sufficiently credit-worthy to obtain a Letter of Credit to cover these costs for three years, MARQUES believes that the potential applicant should refrain from applying until the second round.
The proposal for a COF is of concern to MARQUES for three reasons:

1. It encourages organizations who may not be credit-worthy to participate in the new gTLD program
2. It places ICANN perilously close to being an insurance provider – which is not part of ICANN's Mission or Purpose and may even place ICANN in conflict with the authorities that regulate insurance markets
3. It pushes up the costs of well-run, credit-worthy organizations which can obtain Letters of Credit

ICANN's Letter of Credit solution was developed over four years and six editions of the Applicant Guidebook. MARQUES is very concerned that the COF idea is a hasty, last minute idea that introduces unnecessary risk into the new gTLD process that also pushes up the cost of well-funded applicants and ICANN.
MARQUES (05 Dec 2011)

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. 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 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 gTLD registries (e.g. community, limited linguistic/cultural, brand, traditional for profit, etc.) The BC believes that ICANN should not assume insurance underwriting risk for registry failures. 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. 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 the registry's operating experience is significantly different form projections included in the application.
(BC - 09 Dec 2011)

The issues we are having difficulty with - in both the COI and the COF - are:
* both require an inordinate amount of capital be 'parked'; money that could otherwise by more usefully deployed by new gTLD managers in developing and marketing their string to their potential registrants;
* tying up financial resources for a period of 3 years is an inordinate amount of time considering that a failing registry can be switched over to failover system in less than 24-48 hours, if appropriate technical provisions are in place (i.e. prior to the new registry being 'turned on' in the root);
If an applicant selects a non-incumbent provider, ICANN need only mandate that backend provider to meet the same failover standards as incumbent registries have in place. ICANN should NOT be looking to new registry applicants - which are effectively 'marketing organizations' that within ICANN nomenclature are called 'registry operators' - but rather to those entities that will, in point of fact, be managing the technological part of the registry business, i.e., said third part backend operators. Finally, in this discussion one must also consider the fact that not one of the registries that 'run' the Internet today have ever failed in the history of ICANN. And should a failure have occurred, the incumbent registry operator's own failover redundancy systems would have kicked in. We propose that ICANN establish a base standard that every backend service provider meet to ensure that there is no impact on end-users irrespective of which domain name they register and whether or not the front-end of those registries remains operational.
(RA Partners - 12 Dec 2011)

Thanks for the opportunity to comment on the Continuity of Operations (COI) requirement in the Applicant Guidebook. As you probably know, the requirement is causing a great deal of angst among Potential applicants, because of the uncertainty of the amount and the fear that it will be crushingly high. That's not good for the new gTLD program and it's hurting ICANN's operational reputation. ICANN should make some changes to the COI to resolve these issues. What is needed at this moment is certainty. Right now the COI is excessively onerous. It makes every applicant, including small cultural and linguistic TLDs, cities, everyone, put aside sufficient money to pay for something that's extremely unlikely to happen – catastrophic failure, where both the registry and the back-end registry operator fail at the same time, requiring the intervention of an Emergency Back-End Registry Operator (EBERO). But how often is that going to happen? Until now, no gTLD registry has gone out of business, and certainly not catastrophically. The biggest risk to a new registry, by a long shot, is insufficient revenue. Today the majority of gTLD registries have outsourced back-end technical services. That will be even more prevalent with new gTLDs. The most likely scenario for a failing registry is that the existing back-end registry services provider will continue to run the registry on life support, making modifications for existing customers until a new owner is found. All the infrastructure will be in place and functioning – it would make no sense to move it. In other words, the most common cost for a failing registry is pretty close to zero. Our suggestion is that ICANN should base the amount of the COI on the "worst case" scenario estimates in the financial section of the new gTLD application, instead of the "most likely" scenario.
(*AVC - 03 Dec 2011)*

For a number of years ICANN has successfully collected registry level fees based on a quarterly minimum payment schedule. Additional payments due for domain registrations that exceeded the guaranteed quarterly minimum payment are charged at a multiple of 18 cents per domain. This guaranteed minimum payment program assures the ongoing operation of ICANN which is fair and reasonable and has a track record of success. Therefore, it is logical to apply this same financial structure to the COI.

Following the same ICANN model of collecting registry level fees, a COI Registry Security Fee would be collected along with the US $6,250.00 per calendar quarter of registry operation. It is suggested that the quarterly COI Registry Security Fee prepayment would be half the Registry-Level Transaction Fee tracking at $3,125.00 per calendar quarter. This model makes enormous sense as the implementation would be straightforward and RSF contribution will proportionately scale to registry growth. Once an agreed level of Registry Security Fees have been secured, approximately $150k, the RSF would reduce to a nominal rate of one cent per domain registered.

What has been proposed is that an Escrow Managed self-funding COI/COF Registry Security Fee Program will secure the ongoing operation of a given TLD whilst protecting ICANN from unintended failing registry consequences that would contradict their organizational charter.

The escrow managed self-funding COI/COF Registry Security Fee Program gives smaller but still culturally important TLD's the opportunity to prove themselves commercially without imposing any extraneous financial obligation on other TLD registries or ICANN.

ICANN management has received a barrage of complaints about the COI. It is believed that the "Occupy the COI" movement can be resolved by adapting the same successfully time tested financial program that ICANN employs with the quarterly registry fee minimum payment program. This solution to resolving the COI/COF is just common sense.

(MH - 04 Dec 2011 Revised 05 Dec 2011)

We understand that switching from the current Continuing Operations Instrument (COI) model to a Continued Operations Fund (COF) model will create an unnecessary burden for businesses that are planning to operate "single registrant" or "closed" registries for .BRAND gTLDs (by "single registrant" and "closed," we mean that the registries will not sell second-level domains to third parties, but rather use them for internal purposes).

(CADNA – 19 Dec 2011)

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN Reply:

ICANN thanks community members for the comments received on the proposal from the RySG.

The New gTLD Program launched on 12 January 2012. The launch used the model proposed by ICANN which is outlined in the Applicant Guidebook http://newgtlds.icann.org/applicants/agb), in particular question 50 in the Evaluation Questions and Criteria set forth in Module 2, and Specification 8 of the Registry Agreement.

Prior to the launch of the program, on 23 December 2011, in response to community members and prospective applicants' inquiries, ICANN published further guidelines regarding the calculation of the COI estimated costs. This information is available here:

http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm