Proposed Renewal of .org Registry Agreement

This is the submission of the Non-Commercial Stakeholder Group (NCSG) to the public comment proceeding regarding the proposed renewal of the .org Registry Agreement. As the only entity in ICANN which represents non-state and non-market interests, including the interests of non-commercial registrants and non-commercial Internet users - many of whom hold portfolios of .org domains - this agreement is of particular interest to us. While we strongly support the work of the Public Interest Registry, there are two aspects of the proposed new agreement which we find potentially troubling:

1. the decision to subject the renewal agreement to Rights Protection Mechanisms; and
2. the decision to remove price cap provisions in the current .org agreement

Rights Protection Mechanisms

The NCSG does not support subjecting the renewal agreement to Rights Protection Mechanisms (RPMs), including the Uniform Rapid Suspension (URS) system, Trademark Post-Delegation Dispute Resolution Procedure (PDDRP), and Registration Restrictions Dispute Resolution Procedure (RRDRP). These RPMs, by the rules of their adoption by the GNSO Council and the ICANN Board, apply to new gTLDs, and not legacy TLDs, such as .org and .com. Indeed, the establishment of the URS, and the other new rights protection mechanisms, was part of the bargain that was struck to mollify intellectual property interests concerned that the new gTLDs would become a haven for trademark infringement. In order to assuage concerns that the rapidly growing new domain name space would create a range of problems for trademark owners, a fast-track dispute resolution system was developed along with a range of additional rights protections mechanism, including the Trademark Clearinghouse. But in 2010 these mechanisms expressly were not added to or intended for legacy gTLDs.

Applying the URS system and other new gTLD RPMs to legacy TLDs not only turns the previous multistakeholder process of policy making on its head but, more importantly, it undermines the current *ongoing community discussions regarding the future of the URS*. At the moment, the GNSO's Rights Protections Mechanisms Policy Development Policy Working Group is deliberating over an extensive set of charter questions, including whether the URS and other RPMs should be adopted as ICANN Consensus Policy applicable to all gTLDs (including legacy gTLDs), remain as a policy approved by the ICANN Community only for New gTLDs, or even whether to eliminate the URS entirely. Debates around whether the URS should be applied to legacy TLDs have been an extremely contentious issue and there is currently no decision to apply it to legacy gTLDs.

Accordingly, the decision to include the URS and other RPMs in .org's registry agreement essentially runs roughshod over the multistakeholder process and subverts the Community's deliberations. It makes the applicability of these RPMs to this large legacy TLDs a fait accompli and a decision by ICANN Staff, rather than by the RPMs WG, the GNSO Council and the

ICANN Board. We respectfully submit that this is completely inappropriate, and deeply undermines the Community's role in policy development at ICANN.

Against these serious concerns, it is unclear what purpose the URS and other RPMs would serve in the .org space, given that this domain is hardly the preserve of major branded interests. Absent any evidence that .org faces substantial challenges with typosquatting, or the mass registration of domains for deceptive purposes, it is difficult to see the necessity of this change. The URS and other RPMs will likely never be used in the context of .org, and its inclusion here serves no purpose other than to upend community discussions on the future of rights protection mechanisms at ICANN.

We note further our strongest objection to handing PIR additional authority "to develop additional rights protection mechanisms." With PIR's huge embedded community of 10 million registrants, many dedicated to noncommercial, non-profit, civil society and public interest work, it is especially important to consider the protection of free expression and fair use/fair dealing when evaluating additional protections for intellectual property owners -- and especially important to work directly with the community on such proposals. No one in the GNSO authorized this expansion of RPM creation to legacy gTLDs and ICANN now dangerously strays into the area which must be reserved for consensus policy. Accordingly, we strongly oppose these provisions.

Removal of Price Cap Provisions

The NCSG disagrees with the decision to remove price cap provisions in the current .org agreement. On the one hand, we recognize the maturation of the domain name market, and the need for Public Interest Registry to capitalize on the commercial opportunities available to it. Public Interest Registry, as a non-profit entity, supports many excellent causes (including, it is worth noting, the NCSG). On the other hand, as the home for schools, community organizations, open-source projects, and other non-profit entities that are run on shoestring budgets, this registry should not necessarily operate under the same commercial realities that guide other domains. Fees should remain affordable, with domains which are priced within reach of everyone, no matter how few resources they have. Consequently, we support leaving the price cap provisions in place. We would not object to the price cap being raised by a reasonable level .

NCSG Recommendations:

1. Specification 7 Clause 2 (which mandates the application of PDDRP, RRDRP, and URS to .org) should be deleted along with all provisions allowing the Public Interest Registry to develop additional rights protection mechanisms absent ICANN policy.

2. Rather than removing price caps from the agreement entirely, these should be retained but raised by an appropriate amount. In addition, this aspect of the contract should be subject to a

review midway through the contract, based on the impact of the price changes on non-profit registrants.

Thank you for the opportunity to provide input on this important matter. Please feel free to contact us should you require any clarifications on our comment.

About the NCSG

The NCSG represents the interests of non-commercial domain name registrants and end-users in the formulation of Domain Name System (DNS) policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organisational members in over 160 countries, and as a network of academics, Internet end-users, and civil society actors, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999 (the Non-Commercial Domain Name Holders Constituency, NCDNHC), we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues. We believe our evidence-informed public interest-orientated contributions provide balance against state and market interests to protect non-commercial interests in ICANN's policy development process.