

Summary of .POST sTLD Agreement Provisions

The proposed .POST agreement largely follows the terms of other Sponsorship Agreements negotiated by ICANN including:

- ten-year term;
- domain name allocation via ICANN-accredited registrars except for the 1,000 names sponsor may register, as provided in Appendix 6 to the Agreement, directly with registry operator;
- comprehensive registry data escrow; and,
- approval of new registry services and modifications to existing registry services.

The issue that was the most discussed was that which relates to compliance with the Agreement (including adherence to consensus policies and temporary specifications) in the event of a conflict with international law (including UPU Acts and regulations). The result of the negotiation is the addition of Section 8.11: Provision Relating to the Sponsor as a Specialized Agency of the United Nations. This new provision sets forth a comprehensive procedure, rights and remedies in the event that such a conflict arises. In the event of such a conflict, the compromise approach allows for the UPU to have flexibility in adhering to the Agreement, while ensuring that ICANN has an appropriate remedy if the UPU fails to comply with its obligations under the Agreement in a manner that threatens the security and stability of the registry services, the DNS or the Internet, including the ability to implement emergency technical measures without the UPU's consent.

Set forth below is a brief summary of the material deviations between existing Sponsored TLD agreements and the proposed .POST Sponsored TLD agreement with the Universal Postal Union.

Provision	Existing sTLD Agreements	Proposed .POST sTLD Agreement	Rationale
Conflicts between the Terms of the Agreement and International Law	No special provision dealing with circumstances where international law prohibits the Sponsor's performance of its obligations under the agreement.	In the event of such a conflict, ICANN will waive compliance with the provision in question, unless ICANN determines that such non-compliance presents a threat to the security and stability of the internet, registry services or the DNS. If such a threat exists, ICANN is not obligated to waive compliance unless ordered to do so by an arbitrator. ICANN may also take emergency action (i.e., technical measures) to address	Sponsor's special status requires it to comply with international law above contractual provisions, but ICANN will have rights and remedies in the event of a breach that threatens security and stability, and may take immediate actions to stem such a threat.

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		such threat prior to any arbitration hearing.	
Transition of the TLD	ICANN may transition the TLD to a successor of its choosing in the event of a termination of the agreement and Sponsor must cooperate in such transition and release all registry data to ICANN or its designee.	ICANN may transition the TLD to a successor but sponsor need only cooperate in the transition if it approves the successor, and, if not, sponsor may retain all registry data.	Sponsor is uniquely situated to operate the TLD and requested protections against the TLD being re-delegated to an inappropriate entity.
IP Rights in Data	Sponsor is not entitled to claim any IP rights in registry data and will license all rights, if any, to ICANN in the event that registry data is released from escrow.	Sponsor retains ownership rights in the registry data during the term of the agreement, after which all rights are assigned to ICANN. In addition, sponsor will license all rights to ICANN in the event that registry data is released from escrow. The IP rights held by sponsor's members are not subject to the agreement.	Sponsor requested clarification with respect to ownership rights in the registry data but the substantive rights of the parties remain unchanged.
Damages for Failure to Perform in Good Faith	ICANN may seek punitive or other extraordinary damages if sponsor is found to be in material breach of the agreement on three separate occasions.	ICANN may not seek punitive or other extraordinary damages in the event of three material breaches, with any damages limited to an amount equal to the annual registry fee paid by sponsor to ICANN.	Because of its special privileges and immunities, sponsor requested that it not be subject to extraordinary damages.
Arbitration	All arbitrations will be held in Los Angeles, CA and may be enforced in any court of law.	Arbitrations will be held in Geneva, Switzerland and be subject to the rules of the International Chamber of Commerce.	Sponsor is an international entity and requested the venue change and international rules as a more neutral alternative to Los

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			Angeles venue and US courts.
Tax Matters	No comparable provision	ICANN acknowledges Sponsor's status as a tax exempt international entity and agrees not to invoice Sponsor for certain taxes.	Sponsor requested this special provision because of its unique international tax-exempt status.
Indemnification	Sponsor will indemnify ICANN from any damages or claims arising as a result of sponsor's or registry operator's operation of the TLD.	Sponsor will cooperate with ICANN in minimizing any damages arising from sponsor's or registry operator's operation of the TLD.	Because of its special privileges and immunities, sponsor will not be directly liable to ICANN in the event of a claim but will cooperate to resolve such claim.