

# Staff Report of Public Comment Proceeding

## Launch of Registration Authentication Platform for .MOI TLD

**Publication Date:** 27 May 2016

**Prepared By:** Krista Papac

### Public Comment Proceeding

Open Date: 2 March 2016

Close Date: 24 April 2016

Staff Report  
Due Date: 20 May 2016

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**Staff Contact:** Krista Papac

**Email:** [krista.papac@icann.org](mailto:krista.papac@icann.org)

### Section I: General Overview and Next Steps

On 21 December 2015, Amazon Registry Services, Inc. (ARSI), Registry Operator of .MOI TLD submitted a [Registry Services Evaluation Policy \(RSEP\)](#) request to launch Registration Authentication Platform service for .MOI TLD.

As required by the RSEP, ICANN has undertaken a preliminary determination on whether this RSEP proposal might raise significant competition, security or stability issues. ICANN's preliminary review (based on the information provided) did not identify any such issues.

Following ICANN's preliminary determination the proposal does not raise significant competition, security or stability issues, it was further determined the proposal would require a material change to the .MOI Registry Agreement (RA) and an amendment is needed in order to effect the change.

From 2 March 2016 – 24 April 2016, ICANN posted the proposed RA amendment for public comment. At the time this report was drafted, seven comments were posted to the public comment forum. It should also be noted that an additional comment was received during the finalization of the report and that it is not being included in the summary, however all comments are available for review on the public comment forum.

#### Next steps

ICANN will consider these comments as it determines whether or not to approve the requested amendment.

### Section II: Contributors

*At the time this report was prepared, a total of seven 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:

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
OnlineDomain.com	Konstantinos Zournas	OD
12 Registrars	Darcy Southwell	12R
Com Laude	Jeffrey J. Neuman	CL
DotMusic	Constantine Roussos	DM
Amazon Registry Services, Inc.	Kristine Rosette	ARSI1
Kathryn A. Kleiman & Edward Morris	Kathryn A. Kleiman	K&M
Amazon Registry Services, Inc.	Kristine Rosette	ARSI2

**Section III: Summary of Comments**

*General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer 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).*

Comments submitted regarding the Launch of a Registration Authentication Platform for the .MOI TLD fall into five common themes, as described below:

1. The “closing” of a generic TLD
2. Lack of specificity and clarity of the proposed amendment
3. Effects of proposal on competition and equitable access
4. The proposal might set precedent
5. Processing of this request under RSEP

Comments submitted by ARSI attempted to address concerns and provided additional perspective into the .MOI proposal.

**Closed generic TLD (OD, 12R, DM, K&M)**

Some of the submitted comments raised concerns that approving the amendment to implement the new service would facilitate .MOI becoming a closed generic TLD, which is inconsistent with the requirements in the Registry Agreement.

Commenters who raised this concern stated that .MOI is not a community-based TLD that would warrant restrictions, community-tailored policies and enhanced safeguards to serve a particular community's legitimate interests. These comments go on to state that, the proposed amendment would give ARSI the right to decide who is allowed to register names under .MOI TLD without consideration of Registration Policy, raising the perception Amazon is looking to retroactively “close” what was applied for and approved to be operated as “open” generic

TLD. Some commenters who raised this concern assert that allowing the proposed service to move forward is a work around to what is a policy issue. Additionally, while registration tokens and pre-registration verification procedures are not explicitly prohibited in gTLDs and have been used in the past in limited circumstances, some commenters state that the inclusion of these practices after a TLD is delegated "*should only be allowed in compelling circumstances because they are, in effect, retroactively "closing" what was applied for and approved to be operated as an open, generic TLD.*"

CL offered a different view and stated that the use of tokens provides public benefit safeguards since domains only go to those parties that legitimately meet any validation or verification requirements.

ARSI Response:

ARSI indicates it does not intend to close the .MOI TLD. It affirms seeking to offer specific value and additional services to the customers and argues that utilizing a pre-registration policy verification process does not create a "closed" TLD. It further notes registration restrictions are allowed as long as the eligibility criteria are compliant with Spec 11, 3d.

ARSI stated that it intends to use the same token system other registries use for post-registration verification and argues that the use of such token pre-registration does not result in different restrictions to registration in a TLD than when it is used post-registration.

**Lack of specificity and clarity of the proposed amendment (OD, 12R, DM, K&M)**

Some commenters raised concerns that the proposed amendment lacked sufficient specificity that is needed to allow the community to properly comment and know what is being approved.

Commenters stated the proposal is likely to violate Amazon's commitment under Specification 11, its Public Interest Commitments, to "*operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.*" Additionally, these commenters suggested that the fact that how the platform would work has not been explained in detail makes it difficult for the community to fairly comment on the proposal. Some also suggested that the title of the public comment "Launch of Registration Authentication Platform for .MOI TLD" is rather misleading as well because it does not give the community a clear picture of what is actually being proposed for approval.

ARSI Response:

ARSI responded to this concern by asserting that it deems that additional information is not required under RSEP and not in ICANN's purview. It further states that it is not required from any other Registry. ARSI indicates that the proposed token system is used by other Registry Operators (naming Verisign and Neustar) for post-registration verification.

**Effects of proposal on competition and equitable access for registrars (12R, K&M, CL)**

The noted commenters state the proposed amendment would allow ARSI to control the competition and provide preferential access to certain registrars. Registrars who submitted a comment expressed concerns with losing the ability to market their services to registrants, not being treated equitably compared to ARSI's vertically integrated Registrar, and being at a disadvantageous position due to potential tied selling. Registrars further claimed that offering Amazon tools may be contrary to "ordinary notions of competition" and tying pre-registration activities and value added services will negatively impact competition by creating a "captive audience". 12R suggested that a modification in the proposal such as moving the registrant eligibility check to the Registrar might make the proposal more acceptable. CL offered an alternative view to this proposal by arguing that it would require significant resources on the part of registrars to perform the verification checks, and that it could result in inconsistent interpretation of the registry's eligibility criteria, and ultimately that keeping the integrity of the TLD is the registry's duty not the registrars' duty.

With respect to competition, CL stated that vertical integration as already accepted among registrars, and Amazon's vertically integrated registrar will not be in a more advantageous position when compared to other ICANN-accredited registrars. Additionally, CL believes that pre-registration eligibility verifications and use of tokens improve competition and provide one of the greatest public benefit safeguards since it ensures the integrity, trustworthiness and quality of the TLD which better enables it to compete with other TLD that do not have such systems in place.

#### ARSI Response:

ARSI claims its offering is (1) based on consultation with selected registrars, that (2) Registrants will be able to select their registrar among all participating registrars, (3) that registrar may decide to sell or not sell domain names in the TLD, and (4) that consumers will not be required to purchase other products or services from ARSI to register and use a .MOI domain name.

ARSI moreover affirmed having no intention to violate Specification 9 (Code of Conduct) of its Registry Agreement, which stipulates ARSI must not "*directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions*".

ARSI notes that it will not require its customers to use its value-added services as a condition of registering .MOI domain names and that through these value-added services, ARSI would like to increase competition in order to enhance customer welfare, however ICANN found that ARSI's model did not present any competition-related concerns. ARSI states that it will not require – technically or contractually – its customers to use its value-added services as a condition of register .MOI domains, and that all participating registrars will be listed so that customers can select among them to register their desired domain name. Additionally, the amendment itself is posted for public comment but not the RSEP request and that where ICANN determined that it did not raise any significant competition, security or stability issues.

**Concerns the proposal might set precedent (OD, DM)**

The .MOI request may be used to set a precedent for other ARSI TLDs as well as for other gTLD Registry Operators.

### **Concerns with processing of this request under RSEP (12R, K&M)**

Some commenters suggest the RSEP is not the best or most appropriate mechanism to adopt significant and material changes to a TLD. They state that the RSEP is not the place to change or revise consensus agreements, to change the base Registry Agreement, or to alter key competition agreements and requirements in the Registry Code of Conduct. The commenters suggest that a more appropriate mechanism should be used to address material changes, e.g., developing new Consensus Policy via GNSO PDP.

#### ARSI Response:

To address these concerns, ARSI responded that the amendment itself (i.e. the instrument to implement the new registry services) is published for public comment, not the RSEP request where ICANN determined it did not raise any significant competition, security or stability issues.

Additionally, some comments claimed the proposed service is outside of Registry Services as defined by ICANN, thus, the request should not be subject to RSEP. If that is the case, ARSI argues that the RSEP does not apply and ARSI can offer the proposed service at any time.

### **Other Comments from ARSI**

Apart from addressing the concerns mentioned by other commenters, ARSI also highlighted the following:

ARSI pointed that none of the persons or entities that submitted comments contacted ARSI to discuss any concerns during either 1) the three-month period during which ARSI's RSEP was published on ICANN's website or 2) the extended 52-day comment period on the amendment, which is the subject of this comment period (not the substance of the RSEP itself, which ICANN determined that it did not raise any significant competition, security or stability issues, whereas, ARSI would like to increase competition in order to enhance customer welfare with the launch of value-added services).

Additionally, ARSI noted that some commenters asked ICANN to disallow ARSI's business model. ARSI, however cautioned that ICANN should not go beyond its mission to regulate business models and non-domain spaces and not hamper innovation. ARSI also stated that ICANN should not protect a particular interest over any other to the determinant of registrants and innovation in the marketplace.

ARSI raised a concern that there are certain incorrect premises that seem to flow throughout some of the comments – namely, (1) that the registry's "customer" is the registrar and the registrar's "customer" is the registrant and no other interaction or interpretation should be permitted; (2) that a registry can operate only as dictated by registrars – not the ICANN Registry Agreement, and (3) that there is a vastly expanded understanding/definition of a "closed" TLD, which is not consistent with what is stated in the Registry Agreement. ARSI also notes that many of the comments presume that ARSI intends to violate contractual provisions relating to registry/registrar separation, which is false.

## Section IV: Analysis of Comments

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

While ICANN acknowledges all the posted comments, below are some considerations regarding each of the comments submitted:

### **Closed generic TLDs**

ICANN acknowledges concerns raised by some of the commenters suggesting approving the amendment would allow the .MOI Registry Operator to operate the TLD as a “closed generic TLD” (or “exclusive generic TLD”), as well as the potential policy concerns raised by the issue of “closed generic TLDs”. It should be noted that as part of the development of the New gTLD Registry Agreement, the Governmental Advisory Committee (GAC) advised the ICANN Board in the Beijing Communiqué to implement additional safeguards for certain categories of TLDs, including exclusive generic TLDs. The GAC advised, “For strings representing generic terms, exclusive registry access should serve a public interest goal.” To implement this advice, the Board (through the Board’s New gTLD Program Committee) added a provision to the Registry Agreement prohibiting registry operators of “Generic String” TLDs from imposing eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or the person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.

The NGPC also acknowledged there may be policy concerns with exclusive generic TLDs, and recommended to the GNSO that it consider developing policy on exclusive generic TLDs for the next round of the New gTLD Program. The New gTLD Subsequent Procedures PDP Working Group has included this topic in its Charter for possible policy development work.

The .MOI Registry Agreement, in Specification 11, includes the noted prohibition on operating an exclusive generic TLD. Violation of this provision would be considered a contractual compliance matter. Additionally, since this prohibition is included in the Public Interest Commitments (PICs) in Specification 11, the prohibition could also be enforced through the Public Interest Commitment Dispute Resolution Procedure (PICDRP), which was created to address complaints that a registry may not be complying with the PICs. The proposed amendment to implement the new registry service does not change the existing prohibitions on exclusive generic TLDs or the mechanisms to enforce them. As a result, no changes are recommended to the proposed amendment to address the noted concerns.

### **Effects of proposal on competition and equitable access**

Regarding the concerns ARSI might provide preferential access to some registrars, including its own Amazon registrar, it should be noted that vertical integration of both a Registry and a Registrar is allowed under the Registry Agreement, which also prohibits Registry Operator to "*directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions*" (Section 1 (a) of Specification 9). Violation of this provision would be considered a contractual compliance matter and would be addressed by ICANN's Contractual Compliance department accordingly.

ARSI indicated in their RSEP that "*Amazon Registry reached out to several registrars to have general discussions about their experience with pre-registration policy verification and how that experience (including customer experience) could be improved*" and that "*the customer will select its registrar of choice from among the complete list of .MOI-accredited registrars*". ARSI also confirmed in its comment that when a registrant receives its token to move forward with registering its domain name, all participating registrars will be listed so customers can select among them.

In response to some of the comments raised about competition issues, ICANN acknowledges these comments and notes that as part of the review under the RSEP Policy, in accordance with guidelines published at <https://www.icann.org/resources/pages/prelim-competition-issues-2012-02-25-en>, ICANN has evaluated the proposal for competition issues by analyzing:

- a. Price issues – To the extent a RSEP request could reasonably be determined to affect, or cause the setting or changing of a price of a registry service (as defined in the Policy), the price component is analyzed for potential anticompetitive effects.
- b. Market definition issues:
  - i. Identify the market that the proposed registry service may create or affect.
  - ii. Analyze potential effect(s) on the market, if any, and the significance of the effect (including potential innovation effects in technology markets).
  - iii. Analyze if there are other markets that may be impacted, and potential significance.
- c. Allocation issues:
  - i. Analyze whether the proposed registry service proposes or could reasonably be determined to result in allocation of products or markets, and if so, potential competitive effects.
  - ii. Analyze whether the proposed registry service could reasonably be determined to favor certain customers or registrars.
- d. Analyze possible impact on the operation of other registries, and competitive effects of that impact.

### **Lack of specificity and clarity of the proposed amendment**

It should be noted the amendment describes a generic Registration Authentication Platform for a Registry Operator to "verify eligibility of potential registrants according to Registry Operator's registration policy by providing, receiving, and validating authentication tokens required for the registration of domain names". This language included in the amendment is drafted to address the technical requirements about how the proposed new registry service is to be implemented to ensure the security and stability of the DNS, while leaving appropriate latitude for the Registry Operator to work out the specific details to meet these requirements. This approach is similar to how registry services are drafted in Exhibit A to the New gTLD Registry Agreement. Additionally, amendments to Registry Agreements remain standardized to the extent possible to ensure all Registry Operators are treated equitably. Overall, provisions in Exhibit A of the Registry Agreement aim to provide specificity of approved services to allow for consistent contractual compliance enforcement, and enough flexibility for Registry Operators to implement the service in the way deemed appropriate.

The Registry Operator has not yet published its registration policies for the .MOI TLD, however the TLD hasn't been launched yet and, therefore the registration policies are not yet necessary. It is expected the Registry Operator will publish its full registration policies, as required under section 3.c of Specification 11 "Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies." of its Registry Agreement. Violation of this provision would be considered a contractual compliance matter and would be addressed by ICANN's Contractual Compliance department accordingly.

Finally, ICANN notes the Registry Operator has published its Sunrise policies and scheduled Sunrise for the period of 1 June 2016-15 July 2016.

### **Processing of this request under RSEP**

While some commenters argue verification tokens should be limited to compelling circumstances, the Registry Agreement states registries may offer additional Registry Services, if approved by ICANN, provided they do not violate any terms of the Registry Agreement, Consensus Policy, or contradict Board directives. After discussion between ICANN and the Registry Operator, it was determined the Registration Authentication Platform, inclusive of a verification token, proposed by .MOI is a registry service as defined in section 1.1 of the [RSEP Policy](#). The Registry Agreement and the RSEP Policy define a registry service as: "(A) those services that are both: (i) operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (ii) provided by the Registry Operator as of the Effective Date of the Registry Agreement, as the case may be; (B) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy (as defined above); (C) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator and (D) material changes to any Registry Service within the scope of (A), (B) or (C) above."



Also, the Registry Agreement, adopted by the ICANN Board after multiple rounds of public comment from the community, allows Registry Operators to submit a request for approval of Additional Services pursuant to the RSEP at <http://www.icann.org/en/registries/rsep/rsep.html>, should the Registry Operator desire to provide any Registry Service that is not an Approved Service or is a material modification to an Approved Service (each, an “Additional Service”).

Accordingly, ARSI submitted an [RSEP](#) request to launch Registration Authentication Platform service for the .MOI TLD. Following ICANN’s review of the proposed registry service, no significant Security, Stability or competition concerns were identified.

While some commenters advised ICANN not to use the RSEP to adopt significant and material changes to a Registry Agreement, ICANN notes that the RSEP Policy provides in section 2.4.d (which applies to requests considered under RSEP that do not pose security, stability or competition issues): *"if the implementation of a proposed service requires a material change to a Registry Agreement, the preliminary determination will be referred to the ICANN Board."* In addition, Article 2.1 of the Registry Agreement provides *"In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties"*.

It should be noted that there are two distinct, but interrelated processes - the Registry Service Evaluation Policy process and the Registry Agreement amendment process. A proposed new registry service by a New gTLD Registry Operator must be reviewed under the RSEP process for security, stability and competition issues. Once a determination is made in conformance with the RSEP Policy, the proposed registry service is likely to require an amendment to the Registry Agreement. Such amendments are processed separately and subsequently from the RSEP process, and may involve referral to the ICANN Board depending on materiality of the change as well as precedent as indicated in the [RSEP Workflow](#).

It should also be noted that this public comment announcement aims at gathering community input on the proposed amendment to implement the proposed new registry service for the .MOI Registry Agreement, and not the RSEP request itself.

ICANN will consider all comments in the context they have been provided as it considers whether or not to approve the requested amendment for the .MOI Registry Agreement. ICANN will also take into account the comments submitted regarding the usage of the RSEP mechanism for making material changes to the Registry Agreement.